Jas Mc Manus

THE Law against Bankrupts: OR, A TREATISE Wherein the STATUTES AGAINST BANKRUPTS are Explained, BY Several Cases, Resolutions, Judgments and Decrees, both at Common Law and in *Chancery*. TOGETHER With the Learning of Declarations and Pleadings relating thereunto.

To which are likewise added Forms and Directions for Commissioners, and Presidents, fit for the perusal of Lawyers, or Merchants and Tradesmen.

Sic utere tuis, ut aliena non Lædas.

By *I. G.* Serjeant at Law.

LONDON, Printed for *Richard Southby*, at the *Golden-Fleece*, over against the *Inner-Temple-Gate* in *Fleet-Street*. 1694.

THE PREFACE TO THE READER.

THE Statutes of *Bankrupts*, and the Proceedings thereupon (to any perſons who entertain the leaſt Commerce, and know the World but at an ordinary rate) will certainly appear to be very important; and not only in reſpect of the greatneſs of the Eſtates, the variety and multiplicity of Debts, Credits and Accounts, about which they are

concerned (the effects whereof are derived down upon thouſands of Families) but alſo in regard of the extream Severities and Penalties which are inflicted on the Offenders. And I have often wondred, that ſo little hath been written on a Subject which makes *ſo great a Figure* amongſt Men of Buſineſs, either at *Weſtminſter-Hall*, or upon the *Exchange*. Nay, I may add (to carry on this Reflection a little further) the concerns of Bankrupts, which were heretofore almoſt wholly managed within the Precincts of our Capital City or famous Marts, are now deſcended into Country-Towns and Villages, ſo that it is become a matter of Publick Conſideration.

There are but two (that I know of) who have deſignedly Treated on this Subject: Mr. *Serjeant Stone*, who was a Learned Lawyer and the greateſt Commiſſioner in his time, hath left us his Readings on one of the Statutes againſt Bankrupts; which are indeed full of Moot-Caſes, ingeniouſly contrived, but there are not many

many ſtated Reſolutions; the Caſes of Services, Tenures, Seiſins, Wardſhips, and the like, are not practicable now; and beſides, he hath applied his Reading to one Statute only, and that the firſt; whereas the defects of that Law hath been abundantly aided and ſupplied by ſubſequent Statutes, ſo that He cannot be ſufficiently directive in this Grand Concern: And Mr. *Billinghurſt*, who, for ſo much as he hath attempted, is Acceptable; but we muſt ſay, he hath done little more than to improve the method to which the Statutes themſelves naturally lead him; the Reſolutions are but few, neither do they extend to thouſands of Caſes that daily happen in theſe weighty matters.

Having therefore had ſome looſe Papers, relating to this Subject, brought to my hands, upon peruſal of them, I found they might be uſeful as well for Lawyers as Merchants and other Traders: I conſidered we are not born meerly for our ſelves, we are ſometimes, at leaſt, obliged to

render our ſelver *ſerviceable* to the welfare of the Publick Society whereof we are Members, and to do ſomething that may be uſeful for others. I then (the whole being left to my diſpoſal) made ſome Additions and Subſtractions, as I thought convenient, and moulded them into ſome Frame and Order; the reſult whereof is this little Piece (for Voluminouſneſs I never affected) which I now preſent to you. Whereof I think it becomes me to give this ſhort Account:

To addreſs my ſelf then in the firſt place to the Gentlemen of the Long Robe, I conceive it might be ſome advantage, not only to cite (under Proper Titles) our Printed Law Caſes, and in ſome places to correct them, (but that very ſparingly, for it is expected we ſhould read Reporters in their own Words) but to add ſome Caſes not extant, which I have obſerved in the Courſe of my Profeſſion. I have, in ſome meaſure, conſidered the Learning of Declarations and Pleadings upon Actions brought

brought by the Aſſignees of the Commiſſioners, the uſefulneſs whereof I need not ſtand to Illuſtrate. The Forms and Preſidents (tho' I have not diſplayed all the *Arcana's* of the Commiſſioners Practice) will be ſufficient to give ſuch hints and helps to an ingenious inquiſitive Mind, as thereby to enable him, upon occaſion, to frame Inſtruments of the like nature. In which let me recommend the Preſident of the *Scire Facias* upon a Judgment recovered by the Bankrupt againſt an Executrix, which I take to be the exacteſt in its kind, and which was found in the Manuſcripts of Mr. *Pynſent*, a very Judicious Practiſer and Prothonotary of the *Common Pleas* (now deceaſed.)

As for the Merchants and Tradeſmen, the advantage of a Treatiſe of this Nature will appear if we conſider them as Creditors or Debtors, and into one of theſe two Ranks we may generally caſt them. For, it is morally impoſſible to think that a Merchant can make a ſolemn Proteſtation in this ſort; *I owe to no Body*, and

and no Body owes to me. Affairs of this nature cannot admit of ſuch even Ballances: If we conſider the proſpects and allurements of Advantage and Profit, the inſinuations of Buſineſs, the Twiſtings and Links of Commerce; in ſhort (I ſay) if we reflect on the Revolutions, Movements and Intreagues of Trading, we may then find reaſon to pronounce, that no Trading Merchant (while he continues ſuch) can ſay to his Shop-Book (which is as reſtleſs as that watry and unſtable Element) *hitherto ſhalt thou go and no further.*

You who are not not only dipt, but drencht in Debt, may ſee here how to manage your Concerns with ſo much Prudence, as to avoid thoſe dangerous Shelfs on which thouſands of Families have been irrecoverably ruin'd. For I am very confident, many have committed, or ſuffered ſuch Acts of Bankrupcy, which they never underſtood would bring them within the Compaſs of the Statutes, but have thought that it only conſiſted in Abſconding or downright Running.

You

You who are Creditors, may in this receive hints how to ſecure your Debts in time, and to be precautioned not to be too forward in any fraudulent Contrivances, when you are ſenſible your Debtor is a Bankrupt, tho' no Commiſſion be awarded out againſt him: And alſo how, and in what time you are to be relieved by the Statutes, and whether you are ſuch Creditors who are capable of Relief.

It muſt be granted, and it's the ſubject of pity rather than ſcorn, that many good Men may, and do inſenſibly ſink and decay in their Eſtates, either by loſſes at Sea or Land, living up to ſupport a Credit, and ſhoar up a Reputation (no mean Myſtery in this World) or by the fatal and hidden determinations of Providence, which will ſometimes baffle human deſigns, and will teach us not to aſcribe Succeſs always to our own Induſtry: And therefore frequently preſents Inſtances to confirm the truth of the Wiſe Mans Obſervation, *The*

Battle

Battle is not always to the Strong, neither Bread to the Wiſe, nor yet Riches to Men of Underſtanding.

A Bankrupt, by Fraud, I always hated, I mean one that breaks on purpoſe to raiſe a Fortune by the ruin of others; tho' my Charity and Reaſon will induce me to believe ſuch are not very ordinary. To leave a dear Family to the taunts and ſcorns of inconſiderate and inſulting Fools, to roll about the World ones ſelf like an Outlaw or a Fugitive, certainly are not things of choice, they are in no wiſe amiable. If ſuch Monſters are to be found, I conceive our Laws are not ſevere enough againſt them. But I regret the proceedings againſt Bankrupts by Accident, (if we muſt allow of that diſtinction) and am ſorry they are involved in the ſame Penalties.

But I muſt digreſs no further. I have only to add, My deſign in this is for the Publick Good of my Countrymen: And upon that ſcore I muſt rely upon the Readers pardon for

for my Miſtakes: However, if he will be ſo inexorable as not to grant me a total diſcharge from my Errors, yet I hope my honeſt intentions may mollifie him into ſome reaſonable compoſition for them.

T. G.

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ER-

The Courteous Reader is desired to Correct these few Errors that have passed the Press.

ERRATA.

FOlio 6. antepenult, add *many have*. f. 6. after line 25 put 28, 29, 30 lines. f. 31. *Hench* r. *French*. f. 32. add *and Tompson Defendant*. f. 18. add *and French*. f. 19. l. 1. add *sole Merchant*. f. 22. l. 14. *adjusted*, r. *adjudged*. f. 27. l. 7. 27, r. 7. f. 44. l. 26. add *an*. f. 52. l. 16. r. *be discovered*. f. 74. l. 7. *Officers* r. *Offices*. f. 78. l. 14. *corrected* r. *convicted*. f. 8. l. 5. after *Sales* add *and*. f. 100. l. 13. before *Debts* add *the*. f, 104. l. 18. after *Feme* add *sole*. f. 109. l. 1. r. *whose use* f. 119. l. 21. r. *Fi. Fa.* f. 120. l. 21. r. *Fi. Fa.* l. 23. r. *Exemption*. f. 133. l. 13. *Suit* r. *same*. f. 136. l. 13. *one* r. *once*. f. 142. l. 13. r. *Remedy*. f. 200. l. ult. r. *disgraceth*. f. 228. l. 21. *form* r. *force*. f. 195. l. 20. r. 2 *Bulst*. l. 22 r. 1 *Bronhl*. f. 196. l. 1. r. 2 *Bulst*. l. 5. *Cr. Eliz*. 21. r. 843. f. 197. l. 11. 41. r. 40. l. 12. 40. r. 46.

THE

THE LAW Againſt BANKRUPTS.

CHAP. I.

Forms of the Affidavit, Petition, and Commiſſion; with ſome ſhort Remarks.

AS ſoon as you perceive your Debtor hath done or ſuffered ſome Act, whereby he is become a Bankrupt within the Statutes of *Bankrupts*; in the firſt place the Creditors muſt make Affidavit before a Maſter in *Chancery*, Ordinary or Extraordinary, to this effect following:

Affidavit to be made before a Maſter in Chancery, before the Suing out a Commiſſion of Bankrupt.

A. B. of, &c. maketh Oath, that R.B. of the City of L.Merchant, is truly and juſtly Indebted to this Deponent (and others his Creditors) in the ſum of 100 *l.* and upwards; and that he is become a Bankrupt within the true meaning of one or ſome of the Statutes made againſt Bankrupts, as this Deponent believeth.

Jurat. *A. B.*

Then there muſt be a Petition preſented to the Lord Chancellor, or Lord Keeper, in manner following:

The Form of a Petition to the Lord Chancellor, or Lord Keeper, to grant a Commiſſion of Bankrupts.

In moſt humble manner ſhew unto your Lordſhip,

YOur daily Orators A.B. of, &c. and C.D. of, &c. and W.L. of, &c. as well for themſelves, as all other the Creditors of R.D. of the Pariſh of, &c. in, &c. Merchant: That whereas the ſaid R.D. uſing and exerciſing the Trade of Merchandize

chandize, by way of Bargaining, Exchange, Bartering and Cheviſance, ſeeking his Trade of living by Buying and Selling upon good and juſt Cauſes, for Wares and Merchandize to him ſold and delivered, and alſo for ready Mony to him Lent, being indebted to your Orators, and others his Creditors, in divers and ſeveral ſums of Mony, amounting in the whole to the ſum of,&c. and upwards: Of late, that is to ſay, about the Month of *November* laſt paſt, did become Bankrupt within the ſeveral Statutes lately made againſt Bankrupts, to the intent to defraud and hinder your ſaid Orators, and all others his Creditors, of their juſt Debts and Duties to them due and owing, (that is to ſay) within the Statute, made in the Parliament begun and holden at *Weſtminſter* the ſecond day of *April*, in the Thirteenth year of the Reign of our late Sovereign Lady Queen *Elizabeth*, concerning Bankrupts; and within the Statute made in the Parliament begun and holden at *Weſtminſter* aforeſaid, the nineteenth day of *March*, in the firſt year of the Reign of our late Sovereign Lord King *James*, of *England*, *France* and *Ireland*, and of *Scotland* the ſeven and thirtieth; Entituled, *An Act for the better Relief of the Creditors, againſt ſuch as ſhall become Bankrupts:* As alſo within the Statute made in the Parliament, begun

and holden at *Weſtminſter* the nineteenth day of *February*, in the one and twentieth year of the Reign of our ſaid late Sovereign Lord King *James*, of *England*, *France* and *Ireland*, and of *Scotland* the ſeven and fiftieth; Entituled, *An Act for the further deſcription of a Bankrupt, and Relief of the Creditors againſt ſuch as ſhall become Bankrupts*; or within ſome or one of them. In tender Conſideration whereof, may it pleaſe your Lordſhip, to grant unto your Orators His Majeſties moſt gracious Commiſſion, to be directed to ſuch and ſo many wiſe, honeſt and diſcreet perſons, as to your Lordſhip ſhall ſeem meet; Authorizing them thereby, not only concerning the ſaid Bankrupt, his Body, Lands, Tenements, Frechold and Cuſtomary Goods, Debts, and other things whatſoever; but alſo concerning all other perſons, which by concealment, claim, or otherwiſe, do or ſhall offend touching the Premiſſes, or any part thereof, contrary to the true intent and meaning of the ſame Statutes. To do and execute all and every thing and things whatſoever, as well for and towards ſatisfaction and payment of the ſaid Creditors, as towards and for all other intents and purpoſes, according to the Ordinances and Proviſions of the ſame Statutes.

And your Orators ſhall pray, &c.

Note,

Note, The Creditors muſt name Seven (at the leaſt) Commiſſioners (whereof Two muſt be Eſquires, for the *Quorum*) of whom the Lord Chancellor, or Lord Keeper, ſtrikes out Two. This is the uſual way; but many times, in Matters of great weight, there are Nine or more Commiſſioners, and Three or more of the *Quorum*. Commiſſioners, how many.

If the Petition (which is to ſet forth the Time when he became a Bankrupt) do ſhew that he was a Bankrupt 1*ſt June* 18 *Jac.* and the Commiſſioners find that he became a Bankrupt 1*ſt November* following, yet its well enough; for it ſufficeth that he is a Bankrupt, and the Time is not material, ſo it be before the Date and ſuing forth the Commiſſion.

One ſole Creditor ſhall not ſue out a Commiſſion; for it ought to be at the Suit of the Creditors; by Mr. *Stone*. *Q.* But the daily Practiſe is the contrary, and ſo I perceive the Law to be; for it may ſo happen that the Creditor cannot have a ſatisfaction, but by a Commiſſion: As in caſe the Bankrupt be Tenant in Tail of Lands and Tenements, or a Copyholder, which Eſtates may be ſold by the Commiſſioners; which by no other means can the Creditor have for the ſatisfaction of his Debt. Commiſſion ſued out by one Creditor.

The Bond to be entred in to the Lord Chancellor, or Lord Keeper, upon ſuing out the Commiſſion of Bankrupt.

NOverint univerſi per p̄ſentes me J. A. de, &c. teneri & firmit̄ obligari prehonorabili G. &c. Domino Cancellario Anglie, ſolvend' eid' Domino Cancellario, aut ſuo certo Attornat̄ Executorib⁹, Adminiſtrat̄, vel Aſſignat̄ ſuis: Ad quam quidem ſolut̄onem bene & fidelit̄ faciend' obligo me Heredes, Executores, & Adminiſtratores meos firmit̄ p̄ p̄ſentes. Sigillo meo ſigillat̄ dat̄, &c.

THe Condition of this Obligation is ſuch, That if R.B. of the City of L. Merchant, be a Bankrupt within all or any the Statutes lately made againſt Bankrupts, according as the above-bound A. B. by his humble Petition, exhibited to the above-named Lord Chancellor of *England* hath alledged: Then this Obligation to be void, or elſe to ſtand in full force.

I ſhall add the Form of a Commiſſion, tho' you have it out of the Office, paying the Fees.

The

The Commiſſion is in this manner:

William and *Mary*, by the Grace of God, King and Queen of *England*, *Scotland*, *France* and *Ireland*, Defenders of the Faith, &c. To our truſty and well-beloved A. B. of E. *in Com'*, *&c.* Eſq; C. D. of, &c Eſq; R. S. T. S. and L. W. Gent. Greeting. Whereas we are informed, that J. R. of K. in, &c. Merchant, uſing and exerciſing the Trade of Merchandize, by way of Bargaining, Exchanging, Bartering and Cheviſance, ſeeking his Trade, and of living by buying and ſelling (ſuch a day and year) did become Bankrupt within the ſeveral Statutes made againſt Bankrupts, to the intent to defraud and hinder A. B. of, &c. and W. K. of, &c. and others his Creditors of their juſt Debts and Duties to them due and owing, we minding the due Execution, as well of the Statute touching Orders for Bankrupts, in the Parliament begun and holden at *Weſtminſter* aforeſaid, the ſecond day of *April*, in the thirteenth year of the Reign of our Dear Siſter *Elizabeth*, late Queen of *England*, made and provided. As of the Statute made in the Parliament, begun and holden at *Weſtminſter* aforeſaid, the 19 day of *March*, in the firſt year of the Reign of the late King *James* the Firſt, of *England*, *France*

and *Ireland*, and of *Scotland* the 37*th*; Entituled, *An Act for the better Relief of Creditors, againſt ſuch as ſhall become Bankrupts.* And alſo the Statute made in the Parliament, begun and holden at *Weſtminſter* aforeſaid, the nineteenth day of *February*, in the 21*th* year of the Reign of the ſaid late King *James* the Firſt, of *England*, *France* and *Ireland*, and of *Scotland* the 57*th*; Entituled, *An Act for the further deſcription of a Bankrupt, and Relief of Creditors againſt ſuch as ſhall become Bankrupts.* Upon Truſts of the Wiſdoms, Fidelities, Diligence and provident Circumſpection which we have conceived in you, do by theſe preſents Name, Aſſign, Appoint, Conſtitute and Ordain you our ſpecial Commiſſioners, giving full Power and Authority unto you, Four or Three of you, whereof you the ſaid A. B. or C. D. to be One, according to the ſame Statutes, and every or any of them, not only concerning the ſaid Bankrupt, his Body, Lands, Tenements, Freehold, and Cuſtomary Goods, Debts, and other things whatſoever; but alſo concerning all other perſons, which by Concealment, Claim, or otherwiſe, do or ſhall offend touching the Premiſſes, or any part thereof, contrary to the true intent and meaning of the ſame Statutes, or any of them, to do and execute all and every thing and things whatſoever, as well

well for and towards ſatisfaction and payment of the ſaid Creditors, as towards and for all other intents and purpoſes, according to the Ordinances and Proviſion of the ſaid Statutes: Willing and Commanding you, Four or Three of you, whereof you the ſaid A. B. or C. D. to be One, to proceed to the Accompliſhment and Execution of this our Commiſſion, according to the true intent and meaning of the ſame Statutes, with all diligence and effect, as our ſpecial Truſt is in you. Witneſs our ſelves at *Weſtminſter* the,&c.

If after Seizure, and before Diſtribution, all the Commiſſioners but Two die, or if they of the *Quorum* die, they cannot proceed alone; but a New Commiſſion muſt be awarded, and the New Commiſſioners may call the Old ones to an Account. Death of Commiſſioners.

The words in the Statute 1 *Jac. c.* 15. [*For the Charges of the Commiſſion,*] are to be extended to all the Charges ariſing by the ſuing of it out, and in the Execution of it alſo. *Hutton*, fo. 38. Charges of the Commiſſion.

CHAP.

CHAP. II.

What Trade or Profeſſion a man muſt be of, and profeſs: Or, what kind of Trader he muſt be, that brings him within the Statutes of Bankrupts.

IN the next place I ſhall ſhew, how and when one may be ſaid to be a Bankrupt; and what it is that makes a man become a Bankrupt.

And as to that, it is to be conſidered;

1. What kind of Trade, Occupation, or Profeſſion a man muſt be of, or what kind of Dealing he muſt follow, before he can be adjudged to be a a Bankrupt.
2. What Acts one muſt do, or permit and ſuffer, which will make him a Bankrupt within theſe Statutes, or any of them.

1. What kind of Trade, Occupation, or Profeſſion a man muſt be of; or what kind of dealing he muſt follow, before he can be adjudged to be a Bankrupt.

Stat. 13 Eliz. c. 1. *If any Merchant, or other perſon, uſing or exerciſing the Trade of Merchandize, by way of bargaining, exchange,*

exchange, re-change, bartry, cheviſance, or otherwiſe, in groſs or by retail; or ſeeking his or her Trade of Living by buying and ſelling, and being a Subject born of this Realm, or any of the Queens Dominions, or Denizen, ſhall depart the Realm; or begin to keep his or her Houſe or Houſes; or otherwiſe to abſent him or her ſelf, or take Sanctuary; or ſuffer him or her ſelf willingly to be Arreſted for any Debt or other thing, not grown or due for Mony delivered, Wares ſold, or any other juſt or lawful cauſe, or good conſideration or purpoſes, will ſuffer him, or her ſelf, &c.

Stat. 1 Jac. c. 15. *That all and every ſuch perſon and perſons, uſing or that ſhall uſe the Trade of Merchandize by way of bargaining, &c.* prout in the Stat. 13 Eliz. cap. 7.

Stat. 21 Jac. c. 19. *That all and every perſon and perſons uſing, or that ſhall uſe the Trade of Merchandize by way of bargaining, exchange, cheviſance, or otherwiſe, in groſs or by retail; or ſeeking his or her living by buying and ſelling; or that ſhall uſe the Trade or Profeſſion of a Scrivener, receiving other mens Monies or Eſtates into his or their cuſtody, ſhall be liable to be a Bankrupt.*

Scrivener.

Stat. 14 Car. 2. c. 24. *Whereas divers Noblemen and Gentlemen, not bred up in Trade, have notwithſtanding put great* Stocks *into the* East-India *and* Guiney-Company, *it is declared, That no perſons,*

Stocks in Companies.

Adven-

Adventurers for putting in Mony or Merchandize into the ſaid Companies; or for adventuring or managing the Fiſhing, called the Royal-Fiſhing-Trade, *ſhall be reputed or taken to be a Merchant or Trader within any Statutes for Bankrupts, or be liable to the ſame: Provided that perſons Trading or Trafficking in any other way or manner, than the ſaid Companies or Fiſhing, ſhall be liable to the Commiſſion of Bankrupts.*

Obſerve, That by the *Proviſo* in the later end of the Statute of 21 *Jac.* c. 19. That *that Act, and all other Acts heretofore made againſt Bankrupts, ſhall extend to Strangers born, as well Aliens as Denizens, as effectually as to the Natural born Subjects; both to make them ſubject to the Laws as Bankrupts, as alſo to make them capable of the benefit or contribution, as Creditors by thoſe Laws.*

Aliens.

Notes, Caſes, and Reſolutions upon the Clauſes of the ſaid Statutes, relating to the Trade, Profeſſion, or Occupation of ſuch an one as ſhall be accounted a Bankrupt; and what ſhall be ſaid a buying and ſelling within the Statutes.

1 Note. IT is not buying and ſelling of Land, but of Perſonal things, that makes a man a Bankrupt, *March* Rep. 37.

2. Selling

2. Selling alone will not make a Bankrupt, unleſs he alſo buy, 2 *Keb.* 487. Nor Buying alone.

3. One ſingle Act, tho' it let a man into a general Dealing, will not make one a Bankrupt. *Vid. infra.*

4. He that is a Bankrupt muſt get his living by buying and ſelling, or the chiefeſt part thereof. *Vid. infra.* Except in ſpecial Caſes.

5. It muſt be a general Trade by which his livelyhood is got, and not particular Employments. *Vid. infra.*

Particular Employment.

Such as live on their Manual Labour only, as Husband-men, Labourers, bare Handycrafts-men, &c. are not Traders within the Statutes, *Cro. Car.* 31. But,

Such as buy Wares, and convert them into ſaleable Commodities, and ſo get their livelyhood by ſuch buying and ſelling, may be within the Statutes. As,

Shoe-maker.

A Shoe-maker, that buys Leather and ſells it in Shoes, may be a Bankrupt, *Cro. Car.* 31. *Crump* and *Barnes Caſe.*

Iron-monger.

So of an Iron-monger that buys Rod-Iron or Bar-Iron, and cauſeth it to be work'd up into Wares.

A Trading Smith.

So a Naylor, Lock-ſmith, &c. by the ſame Reaſon of a Shoe-maker.

Clothier.

A Clothier that buys the Wool, and hath it made up into Cloth, may be a Bankrupt; ſo if he work it into Cloth himſelf, by the reaſon of *Crump*'s *Caſe.*

Taylor. A Taylor that makes Garments only, and as Servant to his Cuſtomers, ſhall not be a Bankrupt. But,

Sales-man. A Sales-man, by the reaſon of *Crump*'s Caſe, may.

Carpenter. A Carpenter in *London* hath been adjudged a Bankrupt; but not *quà* a Working-Carpenter.

Mr. *Stone*'s Opinion, p. 166. that a Shoe-maker, &c. is no Bankrupt, is not Law.

Inn-holder. An Inn-holder *quà* ſuch, is not within the Statutes, and may not be a Bankrupt; by 3 *Juſtices* againſt *Berkly*: For tho' he buy Proviſions to be ſpent in his Houſe; yet he doth not properly ſell it, but utters it at ſuch Rates as he thinks reaſonable Gains: And the Gueſts do not contract or take it at a certain price, but they may have it, or refuſe it; and if he take exceſſive Rates, he is Indictable: And in caſes of Inn-keepers Proviſions are not only reſpected, but Furniture of Rooms, Attendants of Servants, &c.

Grazier. But if an Inn-keeper be a Grazier, he may be a Bankrupt, *Cro. Car.* 548. *Criſp* and *Platt*. *March* Rep. 35, 36. *meſme* Caſe. And likewiſe ſo lately Adjudged in the *Kings-Bench*, in the Caſe of *Trigg* verſ. *Newton*, an Inn-keeper at *Bloſſoms-Inn* in *London*.

Vintner. Brewer. A Vintner may be a Bankrupt; or a Brewer.

A

A Farmer, who buyes in Cattle and ſpends ſome, and ſells others, is not a Bankrupt, *Cro. Car.* 458. *March* Rep. 35, 36. Farmer.

But,

A Grazier or Drover may be a Bankrupt; and whether he graze his own Land or not, alters not the caſe. Wherefore I wonder that Mr. *Stone*, p. 165. ſaith, *If he hireth Grounds, and feeds the Cattle, he ſhall be a Bankrupt; but not if he graze upon his own Freehold.* And it hath been ſince Adjudged to the contrary. Drover.

A Cow-keeper at *Iſlington*, was lately Adjudged a Bankrupt.

An Husbandman is not within the Statutes, unleſs he be a Drover alſo: *Per* Baron *Denham* 3 *Car.* at *Wilts* Aſſizes. Husbandman.

Any Trading, tho' the Trade be never ſo Inferior in it ſelf; yet if they get their living by buying and ſelling, and deal conſiderably in it, makes a Bankrupt, with other acts of Bankrupcy.

One is not a Trader within theſe Statutes, who hath left his Trade, but ſells his Goods lying upon his hands, for the Debts which he hath contracted afterwards; unleſs that the Debts were contracted during the Trade: But, Leaving off Trade.

If ſuch Perſons Trade again, and ſo become Indebted, he is a Bankrupt for this; but not for the Debts between. Sir *John Harriſon* and Sir *Job Harvey's* Trading again.

Caſe,

Caſe, cited in Sir *Anthony Bateman*'s Caſe, *Siderfin*, p.411. So,

He ſhall become a Bankrupt for Debts due before he gave over Trading, and continued for new Security taken ſince he gave over his Trading, *Stone* Lect.7.

Diſcontinuance of Merchandize is not an exemption from the Statute, when the Creditors have taken New Securities.

Therefore, its Reſolved, it is not neceſſary he continue his Trade by buying and ſelling, to the time that he becomes a Bankrupt; but it ſufficeth that he hath uſed the Trade, and during that time that he became Indebted, and for that Debt he is now become a Bankrupt. As if a Merchant leave his Trade, and go into the Country for two years, and after he abſents himſelf from his Creditors, by reaſon of the Debts he owed when he was a Merchant, *Mich.* 20 *Jac.* B. R. *Hicroft* and *Hall*'s Caſe. And the ſame was Agreed for Law in *Palmer*'s *Rep.*325. in Evidence to a Jury at *Kings-Bench.*

Debts owing when he was a Trader.

If one for a time deal in a Trade, and after he forſakes his Trade; but leaves his Stock in the hands of another, and he hath part of the Gain, and is partaker of the Loſs: If ſuch an one after deſert and conceal himſelf, he is a Bankrupt within the Statute, *Palmer*'s *Rep.* 325. in the Caſe of *Hayler* and *Hale*. *Vid. infra.*

Partner.

Sir

Sir. *A. B.* had the 16*th* part in a Coleſhip, which Coleſhips are victualled and employed by the Owners. But it appeared when Sir *A. B.* purchaſed the ſaid 16*th* part, the Ship was indebted to him (*viz.*) to Repairs, and it is their cuſtom to repair them upon the Credit of their Bottom, and this Ship had not gained ſo much as to pay for her repairs. This makes not a Merchant Bankrupt, *Siderfin* p. 411. *Sir Anthony Batemans Caſe.* Cole Marchant

That Sir *A. B.* imported Goods in his own name, is not ſufficient, unleſs he doth iſſue out the Proceed ſo imported, as he did employ goods taken in Prize in Revictualling another Ship, which made one a Bankrupt, altho' he was a Gentleman. Importation of Goods.

A Joint Stock is not ſufficient, unleſs ſome diſpoſition of it be actually proved as it is in Sir *John Wooltenholm*'s Caſe, 14 *Car.* 2. *c.* 4. So tho' he be Partner of a Coleſhip, where the Fraight and Ownerſhip are not diſtinct, as in Ships Trading to other parts, 2 *Keble*, 487. Joint-ſtock.

Sir *Tho. Littleton*, Mr. *Papillion*, and Mr. *Child* by contract with King *Charles* 2. were to victual the Fleet at 8*d per diem* a Head, who made an under-contract with the Purſers of the Ships (two of which, *viz.* Mr. *Gibſon*, Mr. *Hench* were Plaintiffs) to victual at 6*d per diem*, and gave a Note of 800 *l.* at 6*d per diem*; and before this Contract Sir *Thomas* was

no Trader, as was agreed; and *per Curiam*, this Contract to Victual a Fleet is no more than to Table with a private man, which will never make a Trader within this Statute; which looks on general Trades by which livelihood is gotten ordinarily, not on particular employments; for so the King's Butler or Steward, or any other Officer might be a Trader.

Particular Employments.

2. Altho' Provisions made for the Fleet, be by the King's direction, but applied to other purposes than was contracted, yet this is no more than a particular Command to a man to buy Provisions for that purpose.

3 It was resolved, that if under disguise of such contract, Sir *Thomas* trade with other Merchants under-hand or secretly; that shall be a Trading within the Statute. But the selling off a Surplusage is no more a Trading, than a Gentlemans selling off the Surplusage of Hay; and he must be a Buyer and Seller too, that is within the Acts. It's not sufficient to Buy alone, or Sell alone; and one single Act, tho' it let a man into a general dealing, will not make a Bankrupt, no more than a Commission of Excise, or a School-keeper that boards Scholars, or Stewards of the Inns of Courts, or Farmers of the Customs, *Gibson verſ. Tompſon. p.* 27. *Car.* 2. *B. R.*

Selling off a Surplusage.

Stewards, Farmers of Customs

A Feme

A Feme Covert Merchant may be a Bankrupt, and ſo ſhall her Husband be; it ſhall be accounted his folly to ſuffer his Wife to Trade as ſuch, and the outlawry of the Husband for the Wives debt ſhall make him a Bankrupt. Feme Covert-Merchant and her Husband.

By a Special Proviſion in 14 *Car.* 2. *c.* 14. Noblemen and Gentlemen, not bred up in Trade, that have put in Stocks into the *Eaſt-India* and *Guiney* Companies, and are adventurers for putting in of Mony or Merchandiſe into the ſaid Companies, or for adventuring or managing the Fiſhing, called *The Royal Fiſhing Trade*, are not to be reputed Bankrupts. But perſons trading or traficking in any other way or manner, ſhall be liable to the ſaid Commiſſions of Bankrupts. In the *Turky* Company every man Trades on his own account and eſtate, and not like the *Guiney* Company or *Eaſt-India* Company. Companies. Adventurers.

Now before this Statute of 14 *Car.* 2. was made, one Sir *John Woolſtenholme* was one of the Corporation of the *Eaſt-India* Company, and a Gentleman of 3000 *l. per annum*, and had a Stock in the Company of his own, and ſat in the Committee of the ſaid Company as a Merchant in the management of Trade, and did receive at ſeveral times the Proceed of his Stock upon returns of Ships, and became indebted to divers perſons, and abſconded himſelf. It was held, that A Gentleman Trader.

tho' he did not get the greateſt part of his Living by Buying and Selling, yet his Employment in the ſaid Committee and Trade, was ſuch a Buying and Selling, as brought him within the Statutes of Banckrupts, and that the Statute was to be taken largely for the Creditor againſt the Bankrupt, and his taking out of his Stock and Goods, and diſpoſing them was a ſelling within the Stat. of 21 *Jac. Hughes grand Abridgment.* Sir *John Woolſtenholms* Caſe. But this Verdict and Judgment againſt Sir *John* was reverſed by the ſaid Stat. 14 *Car.* 2. *c.* 4. but not to avoid any ſale of his Lands made by the Commiſſioners.

Eaſt India. Africa. If a man trade in the *Eaſt-India* Company, and in the *African* Company, or *Guiny* Company and abſcond, *&c.* he is not within the proviſo of this Statute, but *Virginia.* ſhall be a Bankrupt. A *Virginia* Merchant is within the Statute, and ſo others.

CHAP.

CHAP. III.

What Acts a Man muſt do, or ſuffer to be done, before he can be ſaid to be a Bankrupt.

13 Eliz. c. 7. IF *any ſuch Trader as aforeſaid, ſhall depart the Realm, or begin to keep his or her Houſe or Houſes, or otherwiſe to abſent him or her ſelf, or take Sanctuary, or ſuffer him or her ſelf willingly to be Arreſted for any Debt or other thing not grown due for Mony delivered, Wares ſold, or any other Juſt or Lawful Cauſe, or good Conſideration, or Purpoſes, or will ſuffer him or her ſelf to be outlaw'd, or yield him or her ſelf to Priſon, or depart from his or her Dwelling-houſe or Houſes, to the intent or purpoſe to defraud or hinder any of his or her Creditors, being alſo a Subject born as aforeſaid, of the Juſt Debt or Duty of ſuch Creditor or Creditors, ſhall be reputed, deemed and taken for a Bankrupt.*

1 Jac. c. 15. —— *All and every ſuch Traders (as aforeſaid) that ſhall depart the Realm, or begin to keep his or her Houſe or Houſes,* &c. (uſq;) *or yield him or her ſelf to Priſon, or willingly and fraudulently ſhall procure him or her ſelf to be Arreſted, or his or her Goods, Money or Chattels to be Attach'd, or Sequeſtred, or depart from his or*

her Dwelling-houſe, or make, or cauſe to be made any fraudulent Grant or Conveyance, of his, her or their Lands or Tenements, Goods or Chattels, to the intent, or whereby his, her or their Creditors, being Subjects born as aforeſaid, ſhall or may be defeated or delayed for the recovery of their juſt and true Debts; or being Arreſted for Debt, ſhall after his or her Arreſt, lie in Priſon ſix months or more upon that Arreſt, or upon any other Arreſt, or Detention in Priſon for Debt, and lie in Priſon ſix months upon ſuch other Arreſt or Detention, ſhall be accompted and adjuſted a Bankrupt, to all intents and purpoſes.

21 Jac. c. 19. For the further deſcription of a Bankrupt. ——*That all, and every ſuch Trader (as aforeſaid) who ſhall either by himſelf or others by his procurement, obtain any Protection or Protections, other than ſuch perſon or perſons as ſhall be Lawfully protected by the priviledge of Parliament, or ſhall prefer or exhibit unto his Majeſty, his Heirs or Succeſſors, or unto any of the King's Courts, any Petition or Petitions, Bill or Bills againſt his or her Creditor or Creditors, or any of them, thereby deſiring or endeavouring to compel or enforce them, or any of them, to accept leſs than their juſt and principal Debts, or to procure time or longer days of payment, than was given at the time of their Original Contracts; or being indebted unto any Perſon or Perſons, in the ſum of One Hundred Pounds or more, ſhall*

ſhall not pay or otherwiſe compound for the ſame within ſix months next after the ſame ſhall grow due, and the Debtor be Arreſted for the ſame, or within ſix months after an Original Writ ſued out to recover the ſaid Debt, and notice thereof given unto him, or left in writing at his or their Dwelling-houſe, or laſt place of abode; or being Arreſted for Debt, ſhall after his or her Arreſt lie in Priſon two months or more upon that or any other Arreſt or Detention in Priſon for Debt; or being Arreſted for the ſum of One Hundred Pound or more of juſt Debt or Debts, ſhall at any time after ſuch Arreſt eſcape out of Priſon, or procure his enlargement by putting in Common or Hired Bayl ſhall be adjudged a Bankrupt. And in the ſaid caſes of Arreſt, or lying in Priſon for ſuch Debt or Debts, or getting out by Common or Hired Bayl, from the time of his or her ſaid firſt Arreſt.

This Deſcription conſiſts of theſe ſeveral parts.

I. ABſconding or withdrawing himſelf, and that is Four Ways.

1. By departing the Realm. Mr. *Stone* in his Lecture, puts this Caſe. If a man depart the Realm, and long time after his departure becomes *non ſolvent*, his abſenting himſelf in ſuch a Caſe brings him within the Statute of Bankrupts, p. Departing the Realm.

133. It ſeems otherwiſe, For ſuppoſe a Wealthy Merchant goes beyond Sea with a good Cargoe, and ſtates his Accounts with his Creditors, who know of his Voyage, and are pleaſed therewith, and he ſends over ſeveral effects to them, and they truſt him in the way of Merchant-factor; and after five or ſeven years ſpace, he by Loſſes becomes *non-ſolvent*, and abides beyond Sea; I conceive this is not within the Statute. For the Statute of 17 *Eliz. c.* 7. ſaith, That this withdrawing or abſenting, *&c.* muſt be on purpoſe to defraud his Creditors; and this can never be conſtrued ſo; and we muſt imagin after his *non-ſolvency*, he muſt ſtay to get up his Eects.

Departure from his Houſe.

2. Departing from their Dwelling-houſes. It need not be a total departure; for as it is rightly put, If one that hath an Houſe, and yet abſents for fear of Arreſt, for a time, and then returns, yet he is a Bankrupt. Suppoſe a man hath no Dwelling-houſe, but ſojourns ſometime at one place, and ſometime at another, yet if he appear not at his uſual times or places of Trade as formerly, nor can be found as formerly, this is within the words of 13 *Eliz. c.* 7. or *otherwiſe abſent himſelf.* So a Lodger in a Chamber. Yet Query: For if he

Denial to be at home.

ſometimes abſent himſelf, and at other times when he thinks himſelf ſafe from Arreſts, appears publickly, as upon the open

open *Exchange*, this ſeems to be a purging of abſenting or withdrawing himſelf before, as it was held in the Caſe of *Hind* the Banker, who was ſometimes denied at his Houſe, tho' within; yet afterwards appearing upon the open *Exchange*, 'twas held in that Caſe, that this appearing publickly purged ſuch his denial or abſence.

3. Keeping their Houſes. 20 *Jac. B. R. Taylor* and *Hills* Caſe. It was reſolved, That the keeping within his Houſe, unleſs to defraud and delay Creditors, makes him not a Bankrupt. But if he conceal himſelf for Debt, for which he is ſued, and to delay and defraud his Creditors, tho' but for an hour, this makes him a Bankrupt. *Palmers Rep.* 325. *Haylor* and *Hall.* Yet it is adjudged, *Croke, Eliz.* Fo. 13. Keeping his Houſe.

—— If a Trader, on notice of Proceſs iſſued forth againſt him, keeps in to ſecure himſelf from the Arreſt, and after goeth forth again; and then upon like notice keeps his Houſe, and then goeth forth again, this brings him not within the Statutes; becauſe he uſeth to go at large, and he may be met with one time or other. But *Quere* of this Reſolution. For if this be Law, then I do not underſtand the words in 1 *Jac. c.* 15. *or begin to keep his or her Houſe:* And alſo certainly this is a keeping in to delay and hinder Creditors, 17 *Eliz. c.* 7. If the keeping in be to defraud or delay the

the payment, he is a Bankrupt: And Serjeant *Stone* ſaith well, *Fo.* 10. If a Trader abſents himſelf for fear of being Arreſted by a Writ *de Excommunicato Cap.* Or if a Decree in Chancery be made againſt him to execute a Conveyance, and he keeps in, or withdraws himſelf for fear of being Attached for not performing the Decree; ſuch withdrawing doth not make him a Bankrupt. *Aliter*, Perhaps if ſuch Decree had been for payment of Mony, as it was held in the Caſe of one *Albyn*, a *Turky* Merchant. If a Church-warden (Trader) keeps the Church; that is either a keeping his Houſe, or taking Sanctuary. So if a Miller keep in his Mill, that is a keeping his Houſe.

4. Taking Sanctuary. Theſe were priviledged places formerly, but now the Kings Officers may go into any place. If a Merchant abſcond, and liſt himſelf a Dragooner in the Kings Service, or buy a Captains place; yet a Commiſſion may go out againſt him, this is no protection within the the Statute. If a Trader be preſt into the King's Service, I conceive it otherwiſe.

II. The next part of the deſcription is, about the Bankrupts being Arreſted and Impriſoned: Which is either

{ *Voluntarie & permiſſive*, and fraudulent,
Or,
Forced, and ſo continuing in Priſon.

1. Voluntary and permiſſive, 13 Eliz. c. 27. *If any ſuch Trader ſhall ſuffer him or her ſelf willingly to be Arreſted for any Debt, or other thing not grown, or due for Monies delivered, Wares ſold, or any other juſt or lawful Cauſe,* 1 Jac. 15. *Or ſhall willingly or fraudulently procure him or her ſelf to be Arreſted,* 13 Eliz. c. 7. 1 Jac. c. 15. *If any ſuch Trader ſhall yield him or her ſelf to Priſon; this is to be underſtood of voluntary and feigned Actions*; as running into the Kings Bench or Fleet. Feigned Actions.

Or ſhall ſuffer him or her ſelf to be outlawed. 13 *Eliz. c.* 7. 1 *Jac. c.* 15. Outlawry. One Outlaw'd in *Ireland*, is not thereby a Bankrupt here; for that the Record is not pleadable here, *Stone* 172. Now the Reaſon of this Clauſe is; becauſe by the Outlawry the King is intitled to the Goods, and ſo ſeems to be a fraud to the Creditors, which the Law abhors: But if the Debtor reverſe the Outlawry, before the Commiſſion of Bankrupts ſued out, it ſeems otherwiſe, as Mr. *Billinghurſt* conjectures. If it be Reverſed for want

of

of Proclamations, all done in the mean time by the Commiſſioners is void.

If the Jury or Special Verdict, find a Bankrupt Outlaw'd, they muſt find he was outlawed *in Fraudem Creditorum*, and to that intent, 1 *Keb.* 11. *Bradford's* Caſe.

2. Forced Arreſt or Impriſonment, and there the deſcription is this: 1 Jac. c. 15. *If ſuch a Trader (as aforeſaid) being Arreſted for Debt, ſhall after her or his Arreſt lie in Priſon ſix Months or more upon that Arreſt, or upon any other Arreſt, or Detention in Priſon for Debt, and lie in Priſon ſix Months upon ſuch Arreſt or Detention, ſhall be judged a Bankrupt.* 21 Jac. c. 19. *If any ſuch Trader* (as aforeſaid) *being indebted unto any Perſon or Perſons in the ſum of* 100 *l. or more, ſhall not pay or otherwiſe compound for the ſame within ſix Months next after the ſame ſhall grow due, and the Debtor be arreſted for the ſame; or being Arreſted for Debt, ſhall after his or her Arreſt lie in Priſon two Months or more upon that or any other Arreſt or Detention in Priſon for Debt; or being Arreſted for the Sum of* 100 *l. or more of juſt Debt or Debts, ſhall at any time after ſuch Arreſt eſcape out of Priſon, or procure his Enlargemement by putting in Common or Hired Bail, ſhall be adjudged a Bankrupt; and in the ſaid Caſes of Arreſt, or lying in Priſon for ſuch Debt or Debts, or getting out by Common or Hired Bayl from the time of his, or her ſaid firſt Arreſt.*

Ob-

Obſerve this difference,

If ſuch Trader owe 100 *l.* and upwards, and doth not pay or compound for the ſame, within ſix Months next after the ſame ſhall grow due, and the Debtor ſhall be Arreſted for the ſame, he is a Bankrupt, *per* 21 *Jac.* 19. But a Clauſe comes after, And being Arreſted for Debt, ſhall lie in Priſon two Months and more; which includes as well under as above an 100 *l.* So that if a Statute-trader owes me 100 *l.* and doth not pay it or compound for it within ſix Months after its due, and he be Arreſted for it, this makes him a Bankrupt; and if he owe me 20 *l.* and ſhall be Arreſted for it, and lie in Priſon two Months, this makes him a Bankrupt. *Durus Sermo.* The Act ſaith, if he do not compound; ſuppoſe his Creditors will not, then he muſt of neceſſity lie in Priſon; (*upon any other Arreſt or Detention for Debt.*) I conceive the meaning of theſe words are, for Debt originally, and not Debt by reaſon of a Fine impoſed, *&c.* For the Statute hath reſpect to Creditors, either by way of Contract, Exchanging, Buying, *&c.* and not Fines or Amerciaments, *&c.* which no way reſpect Trade. (or *ſhall lie in Priſon after his or her Arreſt two Months or more, on that or any other Arreſt, or Detention in Priſon for Debt*) on which I will put this Caſe. One owes 100 *l.* and is Arreſted and Impriſoned,

Lying in Priſon.

priſoned, and in a Fortnights time pays it; and during that Fortnight another Action of 100*l.* is entred againſt him, and he pays that in a Fortnights time after; and ſo another Fortnight he pays a third Action off. *Quere* if this be within the Statute lying two Months or more on that or any other Arreſt. I conceive not. For by that payment he is diſcharged from that Debt, and ſo not in Priſon on that account.

But the Caſe which Mr. *Billinghurſt* puts. Suppoſe (ſaith he, *p.*—) a man be Arreſted upon a Bond before the day of payment, as by the Cuſtom of *London* he may, and lie in Priſon two Months, *&c.* The *Quere* is, whether this be ſuch an Arreſt for Debt as is within the Statute. It ſeems doubtful. For tho' it be *debitum in præſenti*, and ſo a releaſe of all Debts ſhall extend to it; yet it is not properly a Debt within the words or intent of the Statute, for that muſt be ſuch a Debt for which a Cauſe of Action is given; and there can be no cauſe of Action properly, till the forfeiture, for the Obligation is guided by the Condition; and the Cuſtom of *London* will not help it: For the Cuſtom is not, that he ſhall be Arreſted for the Payment of the Mony, but to find better Sureties. And the Statute only intends Detention in Priſon for a juſt Debt really due. But I ſubmit my reaſon to the Judicious Reader.

Mr.

Mr. *Stone* puts a Queſtion. If a man remaining in Priſon ſix Months at the Suit of the King, makes him a Bankrupt? It may be Anſwered, if it be for a Debt, it doth; if on a Criminal Matter it doth not.

The next part of the Deſcription is, 21 *Jac. c.* 19.

If ſuch a Trader being indebted unto any perſon or perſons, in the Sum of One Hundred Pounds or more, and ſhall not pay or otherwiſe compound for the ſame within ſix Months next after the ſame ſhall grow due, and the Debtor be Arreſted for the ſame, or *within ſix Months next after an Original Writ ſued out to recover the ſaid Debt, and notice thereof be given unto him, or left in writing at his or their Dwelling-Houſe, or laſt place of abode.* This is plain, and needs no explanation. It was reſolved in the Court of Kings Bench, on a Tryal againſt Sir *Anthony Bateman*, *Term. Mich.* 1671. That one may become a Bankrupt, by reaſon of a Suit in the Exchequer, altho' the Statute ſpeaks only of Original Writs; for the Statutes ſhall have a beneficial conſtruction. *Per Hales.*

After an Original Writ ſued out.

The next is per Stat. 21 Jac. c. 19.

If ſuch Trader (as aforeſaid) being Arreſted for the Sum of 100 l. *or more of juſt Debt, ſhall at any time after ſuch Arreſt eſcape out of Priſon, or procure his Enlarge-*

Eſcape.

Common Bayl.

ment

ment by Common or Hired Bail, he ſhall be adjudged a Bankrupt; and in the ſaid Caſes of Arreſt, or lying in Priſon for ſuch Debt or Debts, or getting out by Common or Hired Bail, he ſhall be adjudged a Bankrupt from the time of his firſt Arreſt.

Suppoſe one ſo Arreſted lies in Priſons three Terms, and no Declaration comes in againſt him, and he by courſe of Law is let out at Common-Bayl, *Quere*, if he be within the Statute: for that is a Legal Courſe; and the word (procure) in the Statute is taken *in malam partem.*

The next is, per 21 Jac.

Protections. *If ſuch Trader ſhall by himſelf, or others by his procurement, obtain any Protection or Protections, other than ſuch perſon or perſons as ſhall be lawfully protected by the priviledge of Parliament, ſhall be adjudged a Bankrupt.*

This is plain, All Protections are within this Statute, except Parliament Protections duly obtained.

The next is,

Petition to compound or procure time. *Or if ſuch Trader ſhall prefer or exhibit unto his Majeſty, his Heirs and Succeſſors, or unto any of the Kings Courts, any Petition or Petitions, Bill or Bills againſt his or her Creditor or Creditors, or any of them; thereby deſiring or endeavouring to compel or enforce them, or any of them to accept leſs than their juſt and principal Debts; or to procure*

procure time or longer days of payment, than was given at the time of their Original Contracts, ſhall be adjudged a Bankrupt, Statute 21 Jac. c. 19.

But if the Debtor call his Creditors together, and they grant him Licenſe for longer time, this Act makes him not a Bankrupt; this is no fraud, nor intention to defraud.

The laſt part of the deſcription is about Frauds; and that is in two Paragraphs.

1 Per Stat. 1 Jac. 15. *If ſuch Trader* (as aforeſaid) *ſhall willingly or fraudulently procure his or her Goods, Mony or Chattels to be Attached or Sequeſtred, ſhall be adjudged a Bankrupt.* But then note, That this muſt be of the Parties immediate procuring, and not by his meer Default or Latcheſs. For the words of the Statute are *willingly and fraudulently*; therefore Mr. *Stone*, p. 172. is right in this Caſe. A Merchant, *&c.* hath an Impropriate Rectory; the Choire is not repaired, the Tythes are ſequeſtred; it is no Sequeſtration within this Statute; for tho' this is his default in not repairing the Church, yet it is not of his immediate procuring. So in Caſes of other Attachments out of any Court. Fraud as to Goods.

Lands or Goods.

2. Per Stat. 1 Jac. 15. *If any ſuch Trader ſhall make, or cauſe to be made any fraudulent Grant or Conveyance of his, her or their Lands or Tenements, Goods or Chattels, to the intent, or whereby his, her or their Creditors, being Subjects born (but* Per 21 Jac. *it extends to all Strangers) ſhall or may be defeated or delayed for the recovery of their juſt and true Debts, ſhall be adjudged a Bankrupt.*

But for the further explication of this laſt Paragraph about fraudulent Sales and Conveyances, I ſhall ſhew

What Sales and Conveyances, made by the Bankrupt, ſhall be ſaid to be fraudulent within this Statute, and what not; I mean as to make him a Bankrupt: for as for what Conveyances ſhall be adjudged fraudulent in this Statute in reference to Purchaſers, I ſhall conſider afterwards.

And they may be conſidered two ways.

1. Either ſuch as are made long before he becomes a Bankrupt. Or,
2. Such as are made ſome ſhort time before; for what is done after the time of Bankrupcy is totally void.

But firſt I ſhall obſerve any one ſingle Act of theſe deſcriptions is ſufficient to make

make ſuch Trader (as aforeſaid) a Bankrupt. And that (as by the Preamble of the ſeveral Statutes againſt Bankrupts it appears) the main intent of the Statutes is to relieve Creditors againſt Frauds and Deceits; tho' in ſome of the forementioned deſcriptions a delaying of Creditors is provided againſt, as the lying in Priſon ſix Months, or two Months, or not paying or compounding, *per* 21 *Jac. &c.* yet Fraud and Cheat lies, or ſhould lie at the bottom of all; and I underſtand not the diſtinction of a Bankrupt by Fraud, and a Bankrupt by Accident, which I find in ſome of our Books, as the Laws have been expounded.

Any Fraudulent Conveyance within the Stat. 13 *Eliz.* & 25 *Eliz.* is within this Clauſe. But I ſhall not ſtand upon the explication of thoſe two Statutes, it being a diſtinct Head from my preſent purpoſe; but ſhall come to ſet down ſome Caſes, wherein Conveyances and Sales, made by the Bankrupt, have been adjudged Fraudulent, and which make him ſuch.

If a Trader, finding himſelf ſink in his Eſtate, and doth make a Conveyance of all his Lands and Goods to Truſtees for the payment of his real Debts, and then abſents; yet this Conveyance, tho' it may be truly and honeſtly made

and intended, ſhall not excuſe him; for his very abſconding makes him a Bankrupt: But if he abſcond not, but declares his intention to pay his Debts, and the Truſtees act accordingly, and pay as far as it will go proportionably, this Conveyance, without other act ſhall not make him a Bankrupt; for here is no fraud.

Of Settlements voluntary.

R. B 9 *Jac.* Purchaſed Copyhold-Lands to him and his Son for their Lives, the Remainder to the Wife in Fee, 11 *Jac.* he became an Inholder; and about twelve years after, a Commiſſion of Bankrupcy is awarded againſt him, and the Commiſſioners ſell the Copyhold-Land. *R. B.* dies, his Son enters and made a Leaſe to the Plaintiff, the Defendant entered upon him, and he brought *Ejectione Firmæ.*

1. *Per Cur.* An Inholder is not a Bankrupt. 2. In this Settlement there does not appear to be fraud apparent, and none being found, the Plaintiff had Judgment.

If a man make ſuch a voluntary Settlement, and be indebted at that time, he ſhall be an Offender within this Statute of 13 *Eliz.* The words in the laſt Proviſo of that Statute are, *Provided always, that this Act ſhall not extend to any Lands,*

Lands, &c. *Free or Copyhold, which ſhall be hereafter aſſured by any Bankrupt before he became a Bankrupt: So always that ſuch Aſſurance be made* bonâ fide, *and not to the uſe of the Bankrupt himſelf, or his Heirs; and that the Parties to whoſe uſe ſuch Aſſurance ſhall be made, be not at, or before the making ſuch Aſſurance, privy or conſenting to the fraudulent purpoſe of any ſuch Bankrupt to deceive his Creditors.* But if he be not indebted at the time, if he purchaſe for another, and give unto another; if no fraud be found, it is not within the Statutes; or elſe Lands purchaſed forty years before might be defeated, *March. Rep.* 34. *Criſp. & Platt.* this Caſe is well reported by *Croke Car.* 548, 549, 550. this Land was given by the Father (ſix years before he became a Debtor) to his Son, and no fraud found (being on a ſpecial Verdict) altho' there be circumſtances of a fraud by the ſole taking the Profits, untill he became a Bankrupt.

It is reported in Juſtice *Hutton*, That Every Deed made to defraud other Creditors (but thoſe to whom it is made) is not ſufficient to make one a Bankrupt. But if he make any Deed after he begins to be a Bankrupt, that ſhall not bind, *per Stat.* 1 *Jac.* which makes him a Bankrupt, that makes a fraudulent Deed: It muſt not be made long before he becomes a Bankrupt, *Hutton.* 42,

43. 1 *Croke* 13. *March.* 34. The Caſe was,

A Merchant had made a fraudulent gift of his Goods to the Defendant, but afterwards he went to Church and Exchange, and did Trade and Commerce, yet it was contained in the Indenture of the Commiſſioners to the Plaintiff, that he had made this fraudulent Deed, and that he had traded till a day after, at which day he abſented himſelf, and the Defendant had Judgment in *Trover* upon this Verdict, *Cauſa qua ſupra.* The Statute 1 *Jac.* that makes him a Bankrupt that makes ſuch a Deed of Fraud, muſt not be as this Caſe is (*viz.*) ſo long before he becomes a Bankrupt, *Hutton* 42. *Cartright & Underhill.* But I conceive the Law is contrary to this reſolution, and the caſe is miſreported.

Of fraudulent Deeds and Settlements, in reference to Purchaſes, *vide infra.*

Of a mans becoming twice a Bankrupt.

Note. In the Caſe of *Follyfer & Horn, Hill.* 1657. *in Com. B.* The Commiſſion was ſued out within five years after he became a Bankrupt, and it was confeſt he was a Bankrupt in 1641. but it was ſaid he became a Bankrupt again in 1649.

And

And *Hales* puts this difference, that if one become a Bankrupt by a tranſient Act, as ſuit, *&c.* he may again become a Bankrupt; but if by a Continued Act, as Impriſonment, withdrawing himſelf, *&c.* he may not become a Bankrupt again; ſo with this difference you may underſtand how it is ſaid, once a Bankrupt and always a Bankrupt.

CHAP. IV.

Rules for the Conſtructions of the Statutes, and when the Bankrupcy ſhall be ſaid to Commence.

THE Statutes having made a full deſcription of the Bankrupt; do then order how, and in what manner the Commiſſioners ſhall act. Before we fall directly upon that, I ſhall name two or three things out of theſe Statutes which are neceſſary and uſeful to be known. As,

Note 1. *Per Stat.* 21 *Jac. c.* 19. Theſe Statutes of Bankrupcy are favourably to be conſtrued for the Creditors, being made for the ſuppreſſion of Fraud. *Vide* this explained in many Caſes hereafter;

and yet this ſhould not be too far extended. For the Statutes are highly penal, and my Lord *Bacon*'s Remark is good, *It is an hard caſe to torture Laws, that they may torture Men.*

Alien. Note 2. By Stat. 13 *Eliz.* He that is a Bankrupt muſt be a Subject born in the King's Dominions or Denizen.

One is born in the *Iſle of Man.* Mr. *Stone* ſeems, that he cannot be a Bankrupt, becauſe it hath beed adjudged that it is not parcel of the Realm. But without diſpute it is within the Kings Dominions; and the King grants it to a Subject, and by the precedent Rule the Statute muſt be conſtrued favourably for Creditors.

A Denizen of *Ireland* may be a Bankrupt within the intent of the Statute.

One born in a Ship on the Coaſt of *Flanders*, may be ſaid to be born in the Kings Dominions.

If the Husband be an Alien, and the Wife a Subject; or the Wife an Alien, and the Husband a Subject; by Mr. *Stone* it's all one as to Goods, they are both within the Statute, but the Lands are the Kings. Yet I cannot conceive, that if an Alien marry a Subject Woman, of a great Fortune, that he can be within the Statute, for he is no Subject nor Denizen; and in ſuch caſe I never heard of a naturalization by an Apron-ſtring.

But

But by the Proviſo in 21 *Jac. c.* 19. That Act, and all other Acts made againſt Bankrupts ſhall extend to Aliens, and they ſhall be ſubject to the Laws as Bankrupts, and capable of the benefit as Creditors. Alien. Denizen.

Note 3. When the Commiſſion is to be ſued out, and the effect of it; by the Statute 21 *Jac.* It is provided, that no Purchaſer, for good and valuable conſideration, ſhall be impeached by vertue of any of the Statutes of Bankrupts, unleſs the Commiſſion to prove him or her a Bankrupt, be ſued forth againſt ſuch Bankrupt, within five years after he or ſhe ſhall become a Bankrupt. In other Caſes I find no time limited for the taking out the Commiſſion; tho' its without doubt the ſooner the better for the Creditors. *Vide poſtea Tit.* Settlement, Purchaſers; and the Proviſo, that the Commiſſion muſt be ſued within five years after ſome time when he became a Bankrupt, 1 *Keb.* 12. *Bradford & Bludworth.*

Note 4. From what time the Bankrupcy ſhall commence, per Stat. 21 *Jac. c.* 19. *If any ſuch Trader* (as aforeſaid) *being Arreſted for one hundred pounds, or more, of juſt Debt or Debts, ſhall after ſuch Arreſt eſcape out of Priſon, or procure his Enlargement by Common or Hired Bail; he ſhall be adjudged a Bankrupt from the time of his firſt Arreſt.* Alſo by the ſaid Statute,

If

If ſuch Trader, being indebted unto any perſon or perſons in the ſum of 100 l. *or more, ſhall not pay, or otherwiſe compound for the ſame within ſix Months next after the ſame ſhall grow due, and the Debtor be arreſted for the ſame, he ſhall be adjudged a Bankrupt from the time of his ſaid firſt Arreſt.* For the Statute ſaith in the ſaid Caſes of Arreſt, or lying in Priſon.

But the Statute doth not mention in the Caſe of Eſcape. Yet I conceive it is within the intention, the eſcaping being a more notorious offence than the others.

Per Stat. 21 *Jac.* A man is only a Bankrupt by relation from the time of his Arreſt; when he makes an eſcape, or comes out upon Common Bail.

A Merchant is impriſoned, and after becomes a Debtor to *A*, and then the ſix Months paſs, *A* is relievable as a Creditor, for he is not a Bankrupt by relation, *per* Mr. *Stone*, p. 182.

How a Bankrupt is to be accounted from the firſt Act of Bankrupcy. *Vide infra Cap.* 8. *Radford & Bludworth's* caſe *& Spencer & Vanacres*, caſe.

CHAP.

CHAP. V.

Of Creditors.

Who are Creditors within the Statute, and who are not. Of their Preference. Of their coming in, and within what time they are to come in, or their refuſal; and of Contribution to the Charges. And the Form of an Authority to receive Contribution Mony.

Who are Creditors within the Statute, and who not.

A Merchant enters into a Statute or Recogniſance; the Coniſee is a Creditor, and muſt come in and contribute, or elſe he ſhall have no relief. Coniſee.

An Executor becomes a Bankrupt, a Legatee ſhall be relieved as a Creditor. Legatee.

Mortgagee is not a Creditor within the Statute, and need not come in; for he is provided for by the Statute. So a a Merchant pledgeth Goods, and becomes a Bankrupt, the party need not come in. Mortgagee.

As well Aliens as Denizens may come in as Creditors, *per Stat.* 21 *Jac. c.* 19. Aliens.

A Surety

Sureties.

A Surety may come in as Creditor. *O. & B.* are Sureties for *J. S.* for the payment of Mony; and had Counterbonds from *J. S.* to ſave them harmleſs: The Mony was not paid at the day. *O.* and *B.* the Sureties pay it. *J. S.* after becomes a Bankrupt, *Per Curiam. O. & B.* are Creditors within the Statutes, *Croke, Jac.* 127. *Osborn & Churchman.*

Debt not due.

One hath a Debt not yet due, yet he ſhall be relieved with rateable reſpect of abatement for the time.

Recoverer of Damages.

Mr. *Stone* ſaith, One that recovers damages in Waſte or Treſpaſs, ſhall not be relieved as a Creditor; *Quære*, if that be Law? For in *Benſon & Flowers Caſe. Jones Rep.* fo. 215. A man recovered Damages in an Action on the Caſe for Words, and became a Bankrupt, after Judgment, when it is reduced to a certainty, it may be aſſigned. By the ſame reaſon, if the Plaintiff recover Damages againſt the Defendant, and hath Judgment, and the Defendant becomes a Bankrupt, the Plaintiff is a Creditor: It is a Debt due to him, and Action of Debt lies upon the Judgment. *Quære.*

He that hath the Defendants Body in Execution.

The Plaintiff that hath the Defendants Body in Execution, ſhall not come in to be relieved. But if he have his Body in Execution on a Statute Merchant, *aliter, per* Mr. *Stone. Quære.*

Bail.

A. is Bail for *B.* either to bring his Body, or to pay the Condemnation-mony. *B.* be-

B. becomes a Bankrupt, and abſents, *A.* pays the Mony, he may come in as Creditor.

If one truſt a Bankrupt, after he becomes a Bankrupt, he ſhall not be relievable as a Creditor. Truſting a Bankrupt.

Vide infra, The Caſe of Craven and *Knight in Chancery.*

A Statute extended upon a Bankrupts Lands, before the *Liberate* filed, Lord Chancelor ordered to take like compoſition with other Creditors. *Overman* againſt *Wright*, *Hill.* 17 *Jac. li. B. fo.* 807.

Per Stat. 21 Jac. It is enacted, *That all, and every Creditor and Creditors, having ſecurity for his, or their Debts, by Judgment, Statute, Recogniſance, Specialty with Penalty, or without, or having no ſecurity, or having made Attachment in* London, *or any other place, by vertue of any Cuſtom, there uſed, of the Goods and Chattels of any ſuch Bankrupt, whereof there is no Execution or Extent ſerved and executed upon any the Lands, Tenements, Hereditaments, Goods, Chattels, and other Eſtate of ſuch Bankrupt, before ſuch time as he, or ſhe ſhall, or do become a Bankrupt, ſhall not be relieved upon any ſuch Judgment, Statute, Recogniſance,* &c. *for any more than a rateable part of their juſt and due Debts with the other Creditors of the ſaid Bankrupt, without reſpect to any ſuch penalty, or* Judgmentees, Conuſees and Attachers by Foreign Attachment to come in as Creditors for their ſhare.

greater

greater ſum contained in any ſuch Judgment, Statute, Recogniſance, &c. Of Foreign Attachment, *Vide infra.*

Of Preference.

THE Bankrupt cannot prefer one Creditor before another, 2 *Rep.* 23.

The King. The King ſhall be preferred before a private perſon by the *Stat.* 21 *Jac.* But one part ſhall be allotted to him by the Commiſſioners, according to the proportion that other Creditors have. Sir *Simon Nevels* Caſe, *Hill.* 3. *Car.* 1. *& Paſch.* 1650. *Pickerings* Caſe.

It was moved in *Monck* and *Claytons* Caſe, 3 *Keb.* 68. *& p.* 14. That Mony of the Plaintiffs being a Bankrupt, and an immediate Debtor to the King by returns of Monys from the Commiſſioners of Exciſe, might not be delivered out of Court, to the Aſſignee of the Commiſſioners of Bankrupts, *Sed non allocatur.* But the Mony was ruled to be delivered to the Aſſignee, and that the King may by *Scire Fac.* recover it againſt them.

As to the Caſe of the King, when the King hath Title at Common Law, as by Outlawry, *&c.* and the Subject Title by Act of Parliament, as in this Caſe of the Creditors, which ſhall be preferred, *Vide infra, ſub Titulo Aſſignment.*

Of

Of Creditors coming in, and of Contribution.

Per Stat. 1 *Jac.c.*17. IT is Enacted, *That it ſhall be Lawful for any of the Creditors of the ſaid Bankrupt within four Months after any ſuch Commiſſion ſhall be ſued forth, and until diſtribution ſhall be made by the ſaid Commiſſioners for the payment of the Bankrupts Debts, as in ſuch Caſe hath been uſed, to partake and join with the other Creditors, that ſhall ſue forth any ſuch Commiſſion for ſatisfaction and payment of his, her or their Debts, to him or them owing, without any Hindrance, Let or Diſturbance of any of the ſame Commiſſioners, or of any of the other Creditors, or of any ſuch Bankrupts; the ſame Creditors ſo coming in to contribute to the Charges of the ſaid Commiſſion; and that if the ſaid Creditors come not in within four Months, then the Commiſſioners to have power to diſtribute.*

If certain Creditors ſue a Commiſſion, and others within four Months or more being Creditors, come before diſtribution, and will join in the charge of the Commiſſion, and all that belongs to it, and tender their parts, they ſhall not be refuſed, but have their equal parts as Creditors. But if any Diſtribution be made of any part of the Eſtate, no Creditors are to be admitted after, that come not

not in before, *Hobert* 287. *Hutton* 37. *Rugles Caſe.* So that they may come in at any time before diſtribution.

Refuſal. A Merchants Factor refuſeth to come in as a Creditor, but claims Goods given to him by the Bankrupt in ſatisfaction of his Debt, ſince he became Bankrupt, he ſhall not have any thing in the Diſtribution.

Notice of the Commiſſion. Every Creditor may take notice of the Commiſſion, it being matter of Record, and ſo muſt take care to come in in time, 2 *Rep.* 26. *b.* *Cullamers* Caſe. But it is a good Cuſtom now to give publick notice in the Gazets, or filing ſuch Notice at *Guild-Hall*, or the *Exchange*, or ſuch publick places.

Contribution, The offer of Creditors to be joined, and before they be partakers, is not an effectual offer, without offering to be Contributory to the Charges; but to offer any particular ſum is not neceſſary. *Hutton. p.* 38.

In Canc. inter Fuller & al' contra Lance & al' Hill. 14. *Car.* 1. A Bankrupt makes an agreement with his Creditors, and after breaks the ſame; ſome of the Creditors take out a Commiſſion, and after ſeven Months aſſign the Eſtate; and other Creditors who have notice of the Commiſſion, prefer their Bill to have the Agreement performed, or be admitted to an equal dividend, but they were denied relief.

The

The Form of an Authority to receive Contribution Mony.

MEmorand', We whoſe Names are hereunto ſubſcribed, being the major part of the Commiſſioners, named and Authoriſed by the King and Queens Majeſties Commiſſion, grounded upon the ſeveral Statutes made concerning Bankrupts awarded againſt *J. S.* do hereby think fit, and order by, and with the Conſent of the Creditors of him the ſaid *J. S.* whoſe Names are ſubſcribed (*tho' this is not neceſſary*) that the ſaid Creditors of *J. S.* who are all willing to come in and pay Contribution-mony towards the charges of ſuing forth and proſecuting the ſaid Commiſſion, and diſcovering and recovering of the Eſtate of the ſaid *J. S.* Such Creditors that have already, or ſhall hereafter come into the ſaid Commiſſion in due time, and ſeek relief thereby, ſhall and are hereby ordered to pay the ſum of ——— in the pound for Contribution mony, for every of their ſeveral Debts which they claim to be due and owing to them by, and from the ſaid *J. S.* And we likewiſe further order and think fit, that the ſaid Contribution-mony be paid into the hands of *A. B.* of *&c.* who is appointed hereby to receive the ſame, and to

diſburſe the ſame, as he ſhall be by us directed, and as occaſion ſhall be.

It would be convenient that the Commiſſioners take Bond of the Treaſurer of the Contribution-mony, to diſburſe as he ſhall be by them directed, and to render a due account of all his Receipts, Payments and Diſburſements.

Of Diſtribution, *Vide infra.*

CHAP.

CHAP. VI.

Of the Proceedings of the Commiſſioners. The Form of the Oath. Of the Stile of the Depoſitions, Of declaring him to be a Bankrupt. Inhibition. A Warrant for Witneſſes. A Warrant to ſend one to the Goal who refuſeth to be ſworn, or to anſwer; and of Proof of Debts.

HAving conſidered the Statutes, and cited many excellent Caſes, and Reſolutions of the Judges, what it is that makes a man become a Bankrupt, in reference to his Trade or Profeſſion, and his Acts or Omiſſions, and who are Creditors, and what they muſt do if they will be relieved; I ſhall now come to treat of the behaviour and management of the Commiſſioners in this moſt weighty and important Concern.

The Commiſſioners in the firſt place ſummon Witneſſes to appear before them, or rather they have them generally provided ready by the Creditors, to examine firſt, as to his Dealing and Trade, and then as to his Abſconding, Fraudulent Deeds, Impriſonment, or other Acts which bring him within the

Statutes. And for the better Certainty and Evidence, they take the Depoſitions of the Witneſſes in Writing.

The Form of the Oath to be Adminiſtred to the Witneſſes upon their Examination.

YOU are here produced as a Witneſs, by vertue of a Commiſſion out of the High Court of Chancery, to us, and others directed, to be by us examined concerning the Bankrupcy of A. B. *late of*——&c. *Now to ſuch Queſtions and Iterrogatories as ſhall be propounded and adminiſtred to you concerning the ſaid* A. B. *his Trade or Profeſſion, his Abſconding, and other Acts which he hath done or ſuffered, by which he may diſcovered to be a Bankrupt; and alſo concerning his Lands and Tenements, Goods and Chattels, Debts and Duties, Frauds and Concealments, and other matters and things in obedience to the ſaid Commiſſion, and purſuant to the ſeveral Statutes made concerning Bankrupts, you ſhall true and direct Anſwer make, and ſwear the Truth, the whole Truth, and nothing but the Truth, So help you God.* Or you may put the Form of the Oath ſhorter if you pleaſe.

The

The Stile of the Depoſitions.

EXaminations and Depoſitions of Witneſſes, and other Proceedings, had taken and executed the day of, *&c.* in the Second Year of the Reign, *&c.* *Anno. Dom.* and at other times and places by Adjournment by *W. W.* Eſq; *S. M.* and *C. L.* by Vertue of the King and Queens Commiſſion of Bankrupts under the Great Seal of *England* (grounded upon the ſeveral Statutes made concerning Bankrupts) bearing Date at *Weſtminſter* the day of *&c.* and awarded againſt *J. L.* of *&c.* and directed to *W. W.* Eſq; *R. P.* Eſq; *S. M.* *L. C.* and *A. B.* Gent. Commiſſioners thereby appointed for the Execution thereof, or any four or three of them as followeth.

After the Depoſitions of the Witneſſes to the Trade or Profeſſion, and to the Offence or Acts committed or ſuffered; ſometimes the Commiſſioners ſign a ſhort Memorandum to this purpoſe.

Upon the Evidence and Examinations aforeſaid, We whoſe Names are ſubſcribed, being the major part of the Commiſſioners appointed for the execution of this Commiſſion, do conceive that the aforeſaid *T. L.* the day, *&c.* was, and did

Declaring him a Bankrupt.

did become a Bankrupt within all, or ſome of the Statutes made concerning Bankrupts; and accordingly we declare him to he a Bankrupt, and to have been ſo from that time.

But the Commiſſioners are generally cautious in declaring the Bankrupcy from a certain time, but leave it to a Trial at Law, in caſe there be any Queſtion or Doubt of it; and this for their own ſecurity againſt Actions that may be brought againſt them.

Note. The declaring of the Commiſſioners whether he be a Bankrupt or not, doth not acquit him or charge him, unleſs in truth it were ſo. 2 *Siderfin*, 176.

Then let the Commiſſioners iſſue out their Inhibition to all perſons who are, or have been Debtors to the Bankrupt, or have had dealings with him, or have any of his Goods and Effects in their hands, not to pay any of their Debts, or deliver any of the Goods to him, or his Order. The Form of which Inhibition you may ſoon frame, or repair to a Gazett.

It is convenient to fix this in ſome publick place of the Town or Towns adjacent where the Bankrupt lived; and let them give notice to the Creditors to prove their Debts.

As

As to the proof of Debts. The Commiſſioners muſt ſwear the Creditors which will come in, of the Truth and Value of the Debts due to them. Proof of Debts.

The Form of the Oath for proving a Debt.

YOU *ſhall ſwear that* A. B. *late of*, &c. *at the time of his becoming a Bankrupt, was juſtly, and* Bona Fide *indebted to you in the ſum of and that you have not ſithence been any ways paid or ſatisfied for the ſame, or any part thereof.*

Debts proved upon Oath by the Creditors, as followeth.

Let every man ſubſcribe his Debt.

Be ſure to obſerve and enquire if the Debts were contracted during the Trade.

Vide of this more *infra.*

A Warrant from the Commiſſioners for Witneſſes.

WHereas the King and Queens Majeſties Commiſſion under the Great Seal of *England*, bearing date the *&c.* laſt paſt at *Weſtminſter*, grounded upon the ſeveral Statutes made concerning Bankrupts, hath been awarded againſt *A. B.* of *&c.* and directed to us,

who have hereunto ſubſcribed our Names, and put our Seals; and to *B. &c.* (*here name the reſt of the Commiſſioners*) And we being the major part of the Commiſſioners therein named, having taken upon us the execution of the ſaid Commiſſion; and it appearing to us, upon good and ſufficient proof, That the ſaid A. B. hath for ſeveral years laſt paſt gained his living by buying and ſelling of Cattel, Malt and other Merchandiſe, and thereby became indebted to ſeveral perſons in the ſum of one hundred pounds and upwards; and whereas upon good and ſufficient proof to us made, we have adjudged the ſaid A. B. to be a Bankrupt to all intents and purpoſes, within the true intent and meaning of the ſaid ſeveral Statutes made againſt Bankrupts, ſome, or one of them, before the ſuing forth of the ſaid Commiſſion. And whereas we are credibly informed, that you whoſe Names are hereunto ſubſcribed, are neceſſary Witneſſes for the diſcovery of the ſaid A. B. and his Eſtate: Theſe are therefore in their Majeſties Names, and by vertue of the Statutes and Commiſſion aforeſaid, to Will, Require, Charge and Command you, and every of you, whoſe Names are ſubſcribed; That you be, and perſonally appear before us, at the Houſe of D. E. ſituate, *&c.* upon *Tueſday* the day of this inſtant Month of by eight of the

the Clock of the ſame day; then, and there to Anſwer ſuch Queſtions and Interrogatories as ſhall be then, and there demanded of you, and adminiſtred to you concerning the ſaid A. B. and his Eſtate; whereof you are not to fail, under the penalties, in and by the ſaid Acts provided againſt Contemners of the ſaid Authority. Given, *&c.*

Having ſerved thoſe Perſons you intend for Witneſſes with this, leave an Abſtract of it in writing with them ſeverally. As thus,

E S.

YOU are hereby ſummoned perſonally to be, and appear before the Commiſſioners, on *Thurſday*, the day of inſtant by Nine of the Clock in the Forenoon, at the in L. in the County of *&c.* concerning a Commiſſion of Bankrupcy in proſecution againſt L. M. of *&c.* And hereof you are not to fail at your peril. Dated, *&c.*

A. B.
C. D.
E. F.

A Warrant to Commit a Perſon to the Goal who refuſeth to be Sworn, and to Anſwer Interrogatories.

WHereas their Majeſties Commiſſion under the Great Seal of *England*, bearing date the day of laſt paſt, at *Weſtminſter*, grounded upon the ſeveral Statutes concerning Bankrupts, hath been awarded againſt A. B. of *&c.* directed to us, who have hereunto put our Seals, and ſubſcribed our Names, and to B. L. *&c.* and we being the major part of the Commiſſioners therein named, having taken upon us the execution of the ſame Commiſſion; and it appearing to us upon good and ſufficient proof, That the ſaid A. B. hath for ſeveral years laſt paſt ſought his livelihood by buying and ſelling of Cattle, Malt and other Merchandiſe, and thereby become indebted to ſeveral perſons in the ſum of one thouſand pounds and upwards; and whereas upon good and ſufficient proof to us made, we have adjudged the ſaid A. B. a Bankrupt, to all intents and purpoſes, within the true intent and meaning of the ſaid ſeveral Statutes made againſt Bankrupts, ſome or one of them, before the Date, and ſuing forth of the ſame Commiſſion; and whereas J. S. was ſuſpected to have imbeſled

beſled, concealed and ſecretly diſpoſed of a great part of the Goods and Eſtate of the ſaid A. B. and was duly ſummoned to appear before us; but hath made default in contempt of our Authority; but at length coming and appearing before us, we then ſitting in execution of the ſaid Commiſſion, did obſtinately refuſe to be ſworn, and make anſwer to ſuch Interrogatories and Queſtions, as we by vertue of the ſaid Commiſſion required him to anſwer unto concerning the ſaid A. B. and his Eſtate, according to the true meaning of the ſaid Statutes, for the diſcovering the Eſtate of the ſaid A. B. in contempt of the ſaid Statutes, and of the Commiſſion aforeſaid, and the Authority thereby to us given. Theſe are therefore to Will, Require and Authorize you, and every of you, immediately upon receipt hereof, to Apprehend, Arreſt, and to take into your Cuſtody the Body of the ſaid J. S. and him ſafely to convey to their Majeſties Goal for the County of and him there to deliver to the Keeper of the ſaid Goal, who is hereby Required and Authorized by vertue of the ſaid Commiſſion and Statutes aforeſaid, to receive the ſaid J. S. into his Cuſtody, and him ſafely to keep and detain, without Bail or Mainpriſe, until he ſhall conform himſelf to our Authority, and be thence delivered by due courſe of Law. And for his, and your

ſo

ſo doing, this ſhall be your ſufficient Warrant. Given under our Hands and Seals, the day of &c.

Commiſſioners commit one to theGoal for refuſing to anſwer Interrogatories for the eſcape of the Committee; Action is brought againſt the Goaler. The Action lies.

There were three exceptions to the Declaration.

1. Becauſe it's ſaid the Lord Chancelor *dedit plenam Poteſtatem*, which is not good, for his Office is Miniſterial, and the Statute gives the Power; but *per Curiam*, the Declaration is good; for it is *per Commiſſionem dedit*, and it is alſo *juxta Statut.*

2. Exception, it is alledged the Defendant ſuffered him to eſcape, and he doth not ſay he was not ſatisfied. *Per Cur.* it is good, and ſhall be intended he is not ſatisfied, and the eſcape is the *Tort.*

3. It is alledged the Commiſſioners offered Interrogatories to him, and it is not ſhewed what they were. But this was over-ruled, and Judgment *pro Quer.* 1 *Rol. Rep.* 47. *Barnes* and *Cary* againſt the Sheriff of *Briſtol.*

CHAP.

CHAP. VII.

The Commiſſioners Power in reference to the Bankrupt: Of Proclamation, and the form of it; of breaking Houſes, &c. in reference to the Bankrupts Wife: Of the Examination of the Bankrupt and his Wife: Of the Examination of Witneſſes, and others for the diſcovery of the Eſtate and Debts of the Bankrupt: Of the Penalties of refuſing to be Sworn, to be Examined, or to Diſcover: Of Perjury; and the forfeitures, how to be applied: And of Interrogatories.

Commiſſioners Power.

1. *As to the Bankrupt himſelf.*

To cauſe him to appear { *By Proclamation.* / *By breaking up Houſes.*

Per Stat. 13 *Eliz.* 'IF any ſuch Bankrupt doth withdraw himſelf from his uſual Manſion-House; that then the Commiſſioners, or the major part of them have full Power and Authority to award five Proclamations Proclamations
'clamations

'clamations in the King's Name, upon 'five ſundry Market-days, in ſuch places, 'near the place where ſuch Bankrupt 'hath commonly dwelled, or made his 'abode; commanding them by the ſame 'Proclamations in the King's Name, to 'return with all convenient ſpeed, and 'to yield his Body before the ſaid Com-'miſſioners, having Authority as afore-'ſaid, or one of them, at ſuch time and 'place, as by the ſaid Proclamation ſhall 'be appointed: And if the ſaid perſon 'do not repair and yield his or their 'Body, as is aforeſaid, that then the Bo-'dy of ſuch Offender ſhall be adjudged 'and taken to all intents and purpoſes 'out of the Kings Protection. And 'that alſo every Perſon and Perſons that 'ſhall wittingly and willingly Receive, 'Detain, or keep ſecretly any Perſon or 'Perſons ſo demanded by Proclamation, 'as aforeſaid, ſhall ſuffer ſuch pains, by 'Impriſonment of his, or their Bodies, 'or to pay ſuch Fine to our Sovereign 'Lord the King's Majeſty, as to the 'Lord Chancelor or Lord Keeper of 'the Great Seal (being informed there-'of) by the Commiſſioners ſo to be ap-'pointed, as aforeſaid, or the major part 'of them ſhall ſeem meet and conveni-'ent for the ſaid Offence or Offences.

Concealing the Perſon of the Offender.

Per Stat. 1 *Jac. c.* 15. 'The ſaid Com-'miſſioners may call before them, or the major

'major part of them the ſaid Bankrupt;
'and if upon lawful warning left or Warning.
'made in Writing at three ſeveral times,
'at the dwelling-place or Houſe where
'the ſaid Bankrupt, his Wife, or Fami-
'ly for the moſt part of his abode did
'Lodge, or remain within one year next
'before he, ſhe or they became Bank-
'rupt, the ſaid Bankrupt ſhall not appear
'before the ſaid Commiſſioners, or the
'greater part of them, that then, and
'thenceforth it ſhall be Lawful for the
'greater number of the ſaid Commiſſio-
'ners to appoint, to proclaim the ſaid Proclaim.
'party a Bankrupt, at ſuch publick place
'or places where the ſaid Commſſioners
'ſhall think meet, warning him, her or
'them to appear before them upon the
'ſaid Commiſſion at ſome time appoint-
'ed. And that if upon ſuch ſeveral Pro-
'clamations made in ſome publick place,
'the party offending yield not his Body,
'*&c.* the Commiſſioners may award a
'Warrant to ſuch fit perſons as they Warrant to
'think meet, to apprehend the Body or Apprehend.
'Bodies of ſuch Offender, and to bring
'him before the ſaid Commiſſioners,
'whereſoever the ſaid party or parties
'offending may be found in place privi-
'ledged, or not, to be examined by the
'ſaid Commiſſioners, or the greateſt part
'of them.

After

After notice left in writing three ſeveral times as the Statute directs; then the Commiſſioners may proceed to Proclamation.

The Form of a Proclamation.

Oyes, *Oyes*, *Oyes*, The King and Queens Majeſties do ſtraitly Charge and Command A. B. late of that he on the day of this Inſtant, *&c.* do yield his Body before E. M. Eſq; *&c.* their Majeſties Commiſſioners, named and appointed for the execution of the Statutes of Bankrupts againſt the ſaid A. B. or the major part of them that ſhall be then preſent at the Houſe of R. L. *&c.* upon the Pains and Peril in the ſaid Statutes in that caſe made, provided and appointed.

God Save the King and Queen.

The Commiſſionrs Power in breaking up Houſes.

BY the *Stat.* 21 *Jac. c.* 29. It is enacted, 'That in the execution of the ſaid 'Commiſſion, it ſhall be Lawful to, and 'for the ſaid Commiſſioners, or the 'greater part of them, or any other Per-'ſon or Perſons, Officer or Officers, by 'them, or the greater part of them, to 'be deputed and appointed by their War-'rant or Warrants under their Hands 'and

'and Seals, to break open the Houſe or 'Houſes, Chambers, Shops, Warehouſes, 'Doors, Trunks or Cheſts of the ſaid 'Bankrupt, where the ſaid Bankrupt, or 'any of his or her Goods or Eſtate ſhall 'be, or reputed to be; and to ſeiſe upon, 'and order the Body, Goods, Chattels, 'ready Mony, and other Eſtate of ſuch 'Bankrupt, as by the ſaid former Laws 'are limited and appointed, whether it 'be by Impriſonment of his or her Bo-'dy, or otherwiſe as the ſaid Commiſſio-'ners, or the greater part of them ſhall 'think meet.

The Commiſſioners may break open the Houſe of a Bankrupt for Debt of the Debtor; and if the Bankrupt convey his Goods to his Neighbours Houſe, the Commiſſioners may not, but the Sheriff may break open the Houſe, becauſe he is a ſworn Officer of the Kings. The Commiſſioners may break open the Booth of another to come to the Bankrupts Goods, *per* Mr. *Barckdale*, *Lect. Lincolns-Inn*, 1627. But *Quære* if the Commiſſioners do not now break open any Houſe, Shop or Room where the Bankrupt or his Goods are, tho' they are in the Houſe of a Stranger, *Sed Cave*, for this part of the Statute is very penal, and ſhall be taken ſtrictly. And poſſibly a Judge at a Trial may think that to be Law, which upon mature reflexion appears not to be ſo.

The Commiſſioners Power concerning the Bankrupts Body, and concerning the Bankrupts Wife.

The words of the Statutes concerning this are as follow.

PER *Stat.* 13 *Eliz. c.* 7. It is enacted, 'That the Commiſſioners by vertue 'of that Act, and of ſuch Commiſſion, 'ſhall have full Power and Authority to 'take by their Diſcretions ſuch Or-'der and Direction with the Body 'and Bodies of ſuch perſon, where-'ſoever he or ſhe may be had, either in 'his or her Houſe or Houſes, Sanctuary 'or elſewhere, as well by Impriſonment 'of his or her Body or Bodies, as alſo 'with all his or her Lands, *&c.*

Per Stat. 1 *Jac. c.* 15. It is enacted, 'That if upon Lawful Warning or No-'tice left, or made in Writing three ſe-'veral times at the Dwelling-Houſe, *&c.* '(*vide ſupra*) the Bankrupt ſhall not ap-Proclamation. 'pear, then they may make Proclamati-'on (*prout ſupra*) and if then the Bank-'rupt appear not, then the Commiſſioners Warrant. 'are impowred to award a Warrant to 'ſuch fit Perſon or Perſons as they think 'meet, to apprehend the Body of ſuch 'Offender, and to bring him, her or 'them

'them ſo offending before the ſaid Com-
'miſſioners, whereſoever the Parties ſo
'Offending may be found in place pri-
'viledged or not, to be examined by the
'ſaid Commiſſioners, or the greater part
'of them. And if therein the Offender
'or Offenders ſhall refuſe to be exami-
'ned, or refuſe to anſwer fully to every
'Interrogatory, to him, her or them to
'be adminiſtred by the ſaid Commiſſi-
'oners, or the greater part of them, it
'ſhall be lawful for the ſaid Commiſſio-
'ners, or the greater part of them, to
'commit the ſaid Offender or Offenders
'to ſome cloſe or ſtrait Impriſonment, Impriſonment.
'there to remain until he, ſhe or they
'better conform him or her ſelf.

And by the *Stat.* 21 *Jac. c.* 19. It is Enacted, 'That after ſuch time as any 'Perſon ſhall by the ſaid Commiſſioners, 'executing the ſaid Commiſſion, or the 'greater part of them, be lawfully ad-'judged or declared to be a Bankrupt; 'the ſaid Commiſſioners, executing ſuch 'Commiſſion, ſhall have Power and Au-'thority to examin upon Oath, the Wife Wife Examined 'and Wives of all and every ſuch Bank-'rupt, for the finding out and diſco-'vering of the Eſtate and Eſtates, Goods 'and Chattels of ſuch Bankrupt or Bank-'rupts, concealed, kept or diſpoſed of by 'ſuch Wife or Wives, in their own Per-'ſon and Perſons, or by their own Act

'or Means, or by any other Perſon or 'Perſons. And that ſhe and they, the 'ſaid Wife and Wives ſhall incur ſuch 'danger and penalty for not coming be-'fore the ſaid Commiſſioners, or for re-'fuſing to be ſworn and examined, or 'for not diſcloſing the truth upon her or 'their examination, as in and by the 'ſaid former Laws, or either of them is 'already made and provided againſt any 'other Perſon or Perſons in the like 'Caſes.

So that by this Law the Wife muſt be ſummoned to come before the Commiſſioners, and if ſhe come not, or refuſe to be ſworn, they may impriſon her as well as her Husband: So likewiſe if ſhe refuſe to diſcover the truth.

A Bankrupt was committed to the *Fleet*, the Warrant to the Warden of the *Fleet* was, to receive and keep in Priſon, to anſwer and to ſatisfie all ſuch matters as ſhall be objected againſt him. The Queſtion was, If the Commiſſioners may licenſe him to go at large to treat about his Debts. *Per Cur.* If the Warrant had been that the party ſhould have been in Execution, then he could not be enlarged; but the Court adviſed them to take ſecurity, leſt he ſhould withdraw himſelf. But if one had Judgment againſt a Bankrupt, and upon an *Habeas Corpus* brought

brought, he is committed in Execution, without a *Cap' Utlagat'* then the Commiſſioners cannot enlarge him, *Noy* 140. *Edwards* Caſe.

By *Stat.* 21 *Jac. c.* 19. It is Enacted, 'That if any Bankrupt, upon his or her Examination or Examinations to be taken 'before the ſaid Commiſſioners executing 'the ſaid Commiſſion, be found fraudulently or deceitfully to have conveyed 'away his or her Goods, Chattels, Lands, 'Tenements, Offices, Fees, Rents or Annuities, or other Eſtate, or any part 'thereof, to the value of 20 *s.* or above, 'to the end and purpoſe to hinder the 'execution of this Statute, or of any 'other the aforeſaid Statutes, or thereby 'to defraud, delay or hinder his or her 'Creditors of the ſame, and ſhall not 'upon his or her examination diſcover 'unto the ſaid Commiſſioners, and (if 'it lie in his or her power) deliver 'unto the ſaid Commiſſioners all that 'Eſtate, Goods and Chattels, ſo fraudulently and deceitfully conveyed away, 'as aforeſaid, or by him or her, his or her 'means kept or detained from the ſaid 'Commiſſioners, or that cannot make it 'appear unto the ſaid Commiſſioners, 'that he or ſhe hath ſuſtained ſome caſual loſs, whereby he or ſhe is diſabled 'to pay, what he or ſhe then owed, ſhall 'or may be indicted for ſuch fraud or 'abuſe,

The Bankrupts fraudulent conveyance away of his Goods.

Indictment

'abuſe, at the Aſſiſes or General Seſſions,
'to be holden before the Judges of Aſſiſe,
'or Juſtices of the Peace of the County
'or Place where he or ſhe ſhall become
'Bankrupt: And if upon ſuch Indict-
'ment or Indictments, the Bankrupt be
'thereof convicted, he or ſhe ſo convict-
Pillory. 'ed, ſhall be ſet upon the Pillory in ſome
'publick place, for the ſpace of two
'hours, and have one of his or her Ears
'nailed to the Pillory, and cut off.

Of the Examination of the { *Bankrupt.* / *his Wife.* / *other Perſons as Witneſſes, Concealers,* &c.

And of their refuſal to ſwear and diſcover the Truth, and the Conſequence.

BY *Stat.* 1 *Jac.c.*15 If upon five ſeveral Proclamations the Bankrupt appear not, the Commiſſioners may award a Warrant to apprehend his Body, and to bring him before the ſaid Commiſſioners whereſoever he may be found, to be examined by the Commiſſioners, *prout prius* more at large.

And *that it ſhall be lawful for the ſaid Commiſſioners, or the greater part of them, to examin the ſaid Offender or Offenders*
Interrogatories. *upon ſuch Interrogatories touching the Lands, Tenements, Goods, Chattels, Debts, Bills, Bonds,*

Bonds, Books of Accounts, and ſuch other things as may tend to diſcloſe his, her or their Eſtate, or the ſecret Grants, Conveyances, Eloyning of his or their Lands, Tenements, Goods, Mony and Debts, as they ſhall think meet: And if the Bankrupt ſhall refuſe to be examined, or to anſwer fully to every Interrogatory, that then he ſhall be committed to Priſon, prout ſupra.

By *Stat.* 21 *Jac. c.* 19. The Commiſſioners have Power to examine the Bankrupts Wife upon Oath; and if ſhe come not, or refuſe to be ſworn, then to incur the like penalty with others, *prout ſupra* more at large.

Of the Examination of Witneſſes, and others, for the diſcovery of the Bankrupts Eſtate Real and Perſonal, and his Debts, and the penalty for refuſing to be ſworn and examined, or to diſcover.

PER *Stat.* 13 *Eliz. c.* 7. It is Enacted, 'That if after any ſuch Act or Of-'fence committed, and complaint there-'of made to the ſaid Commiſſioners or 'the major part of them, by any party 'grieved concerning the premiſſes, know-'ing, ſuppoſing or ſuſpecting any of the 'Goods, Chattels, Wares, Merchandiſes 'or Debts of ſuch Offender or Offenders, 'Debtor or Debtors to be in cuſtody, uſe, 'occupying, keeping or poſſeſſion of any

'perſon or perſons, or any perſon or
'perſons to be indebted to any ſuch Of-
'fender or Offenders, do make relation
'thereof to the ſaid Commiſſioners, ſo to
'be appointed, or the major part of
Concealers. 'them; That then the ſaid Commiſſio-
'ners, or the moſt part of them, ſhall
'by vertue hereof and of the ſaid Com-
'miſſion, have full Power and Authority
Debtors. 'to ſend for, and call before them by
'ſuch Proceſs, Ways or Means, as they
'ſhall think convenient by their diſcreti-
'ons, all and every ſuch perſon and per-
'ſons ſo known, ſuſpected or ſuppoſed to
'have any ſuch Goods, Chattels, Wares,
'Merchandiſes or Debts in his or their
'cuſtody, uſe, occupation, keeping or
'poſſeſſion, or ſuppoſed or ſuſpected to
'be indebted to ſuch Offender or Offen-
'ders; and upon their appearance to ex-
'amin them, and every of them, as well
'by their Oaths as otherwiſe, by ſuch
'ways and means as the ſaid Commiſſio-
'ners, or the major part of them by their
'diſcretions ſhall think meet and conve-
'nient, for, and upon the ſpecialty, cer-
'tainty, true declaration and knowledge
'of all, and ſingular ſuch Goods, Chat-
'tels, Wares, Merchandiſes and Debts of
'any ſuch Offender or Offenders, as be
'ſuppoſed or ſuſpected to be in his or
'their cuſtody, uſe, occupation or poſſeſ-
'ſion, and all ſuch Debts as by them or
'any of them ſhall be ſuppoſed or ſuſ-
'pected

'pected to be owing to any ſuch Offen-
'der or Offenders.

'And if any ſuch perſon or perſons,
'upon ſuch Examination, do not diſcloſe,
'and plainly declare and ſhew the whole
'Truth of ſuch things as he or they ſhall
'be examin'd of concerning the premiſſes
'to his knowledge, or do deny to ſwear;
'then every ſuch perſon or perſons, ſo de-
'nying to ſwear, or being examined, do
'not declare the plain and whole Truth
'concerning the Premiſſes, upon due
'proof thereof to be made before the
'ſaid Commiſſioners, or the major part
'of them, by Witneſſes, Examination
'or otherwiſe, as to the ſaid Commiſſio-
'ners, or the major part of them ſhall
'ſeem ſufficient in that behalf, ſhall loſe
'and forfeit double the value of ſuch
'Goods, Chattels, Wares, Merchandiſes
'and Debts, by them, or any of them ſo
'concealed, and not wholly and plainly
'declared and ſhewed; which forfeiture
'ſhall be levied by the ſaid Commiſſio-
'ners, or the major part of them, of the
'Lands, Tenements, Hereditaments,
'Goods and Chattels of ſuch perſons ſo
'denying to ſwear, or not diſcloſing the
'whole Truth, as is aforeſaid, by ſuch
'ways and means, and in ſuch manner and
'form, as is before limitted and appoint-
'ed for the principal Offender or Offen-
'ders, Debtor or Debtors, and the ſame
'for-

Penalty for Obſtinacy.

'forfeitures to be diſtributed or imploy-
'ed to, or for the ſatisfaction and pay-
'ment of the Debts of the ſaid Creditor
'or Creditors, in ſuch like manner, rate
'and form, as is above declared con-
'cerning the ordering of the Lands and
'Tenements, Officers Fees, Goods and
'Chattels of ſuch Offender or Offenders,
'Debtor or Debtors, *as is aforeſaid.*

Per Stat. 1 *Jac. c.* 15. For a further inforcement for diſcovery of the Bankrupts Eſtate, by Examination of Truſtees, Concealers, or of ſuch that have Coniſance of his Eſtate, according to the Statute of 13 *Eliz.* It is Enacted, 'That
'if any perſon or perſons, being known,
'ſuppoſed or ſuſpected to have or detain
'any part of the Lands, Tenements or
'Hereditaments, Goods, Chattels or
'Debts of the ſaid Bankrupt, or to be
'indebted to, or for the benefit of the
'ſaid Bankrupt, ſhall after lawful warn-
'ing to the ſaid perſon or perſons given,
'to come before the ſaid Commiſſioners,
'or the greater part of them, to be ex-
'amined according to the intent of the
'ſaid Statute, refuſe to come, or ſhall
'not come before the ſaid Commiſſioners
'at the time appointed, having no law-
'ful impediment, ſuch as ſhall be admit-
'ted and allowed of by the ſaid Com-
'miſſioners or the major part of them,
'and which ſhall be then ſignified or
'made

Concealers.

'made known to the ſaid Commiſſioners
'at the time of their aſſembly; or that
'any ſuch perſon or perſons, having
'knowledge or warning of any other aſ-
'ſembly or meeting of the ſaid Com-
'miſſioners again, ſhall not come and ap- Refuſal to ap-
'pear before them at ſuch time as he or pear, or an-
'ſhe lawfully may come, having no ſuch ſwer, or diſ-
'lawful impediment as ſhall then be cloſe.
'made known to the ſaid Commiſſioners,
'and by them admitted and allowed of
'as aforeſaid, or being come before them,
'ſhall refuſe to be ſworn, and to make
'anſwer to ſuch Interrogaorties as ſhall be
'adminiſtred unto him or them, accord-
'ing to the true intent and meaning of
'the ſaid Statute made in the 13 *Eliz.*
'or of this preſent Act, That then it ſhall
'be lawful for the ſaid Commiſſioners to
'commit to ſuch Ward or Priſon, as to
'them or the major part ſhall be thought
'meet, all ſuch perſon and perſons as
'ſhall ſo refuſe to be ſworn, and make
'anſwer to ſuch Interrogatories as ſhall
'be ſo miniſtred as aforeſaid; and alſo
'to direct their Warrants to ſuch perſon
'or perſons, as to them or the greater
'part of them ſhall be thought meet, to
'apprehend and arreſt ſuch perſon and
'perſons as ſhall refuſe to appear before
'them as aforeſaid, and to bring him, her
'or them before the ſaid Commiſſioners
'or the greater part of them, to be exami-
'ned, as aboveſaid; and upon his, her

'or

'or their refuſal to come, or to be exa-
'mined before the ſaid Commiſſioners, as
'aforeſaid, to commit the ſaid party ſo
'refuſing, to ſuch Priſons as the ſaid
'Commiſſioners or the greater part of
'them ſhall think meet, there to remain
'without Bail or Mainpriſe, until ſuch
'time as the ſaid party ſo refuſing to come,
'or to be ſworn to anſwer before the
'ſaid Commiſſioners, ſhall ſubmit him or
'her ſelf to the ſaid Commiſſioners, and
'be by them examined according to the
'true intent of the ſaid Statute, and of
'this preſent Act.

Witneſſes. Charges.

Note. By *Stat.* 1 *Jac. c.* 15. It is provided, That ſuch Witneſſes as ſhall be ſent for, ſhall have ſuch coſts and charges as the Commiſſioners in their diſcretion ſhall think fit, the ſame to be rateably born by the Creditors according to the proportion of their Debts.

Per Stat. 21 *Jac.* 15. The Commiſſioners may examine upon Oath, or by any other ways or means, as to them ſhall ſeem meet, any perſon or perſons for the finding out and diſcovery of the Truth and certainty of the ſeveral Debts due and owing to all ſuch Creditor or Creditors, as ſhall ſeek relief by the Commiſſion.

Two refuſe to be examined, and the Commiſſioners make a joint Commitment, it's ill; and it was *quouſque* they con-

conform, and upon return of the *Habeas Corpus*, it is not averred that they were obſtinate, 29 *Car.* 2. *B. R. Penrice verſ. Wing.*

Note. Action on the Caſe lies againſt a Sheriff for ſuffering one to eſcape, who was committed by the Commiſſioners of Bankrupts, becauſe he refuſed to be examined, 1 *Roll. Rep.* 47. *More* 834.—*The Caſe of the Sheriffs of* Briſtol, Vide ſupra.

The Commiſſioners committed one *Jeakile* for refuſing to ſwear upon a Commiſſion againſt *Thompſon.* Now he did not refuſe to ſwear, but had ſworn he had none of the Bankrupt *Thompſons* Eſtate in his hands, but he would not anſwer whether any of *Thompſons* Eſtate came to his hands before the Commiſſion ſued out, *&c.* having received his own Debt before, nor *per Curiam* is he compellable to ſwear ſo, upon 1 *Jac. c.* 15. and then he was committed by *A. B.* Commiſſioners, for refuſing to ſwear, *&c.* whereas the Commiſſion was to *A. B.* and others, it appears not that *A.* and *B.* were a majority or a *Quorum*, which is ill, 3 *Keb.* 837. *Rex verſ. Jeakill.*

Of Perjury, { By the Bankrupt, Witneſſes, Concealers and others, and the Penalties.

1 *Jac. c.* 15. 'IF upon the Bankrupts 'examination it appears 'that he or ſhe, or they have committed 'any wilful or corrupt Perjury, tending 'to the hurt or damage of the Creditors 'of the ſaid Bankrupt, to the value of '10 *l.* of Lawful Mony of *England* or 'above, the party ſo offending ſhall or 'may be thereof indicted in any of the 'King's Majeſties Courts of Record, and 'being lawfully corrected thereof, ſhall 'ſtand upon the Pillory in ſome publick 'place, by the ſpace of two hours, and 'have one of his Ears nailed to the Pillo-'ry, and cut off.

'And if any other perſon or perſons, 'other than the Bankrupt, either by ſub-'ornation, unlawful procurement, ſini-'ſter perſwaſion, or means of any others, 'or by his own Act, conſent or agreement 'ſhall wilfully and corruptly commit 'any manner of wilful perjury by his 'depoſition to be taken before the ſaid 'Commiſſioners, or the greater part of 'them, as aforeſaid, that then the Par-'ties ſo offending, and all, and every 'perſon and perſons that ſhall unlawful-'ly and corruptly procure any ſuch un-

'law-

'lawful, wilful and corrupt Perjury, ſhall 'or may therefore be indicted in any of 'the Kings Majeſties Courts of Record; 'and after his or their conviction there-'of, ſhall incur ſuch forfeitures, and re-'ceive and ſuffer ſuch pains and puniſh-'ments as are limited by the Statute con-'cerning perjury, in the *5th* Year of the 'reign of Queen *Elizabeth.*

The puniſhment by the ſaid Statute is, The Perjured Perſon ſhall forfeit 20 *l.* and indure half an years Impriſonment without Bail or Mainprize, and his Oath never after to be received. And if he hath no Goods or Lands of that value, then to be ſet in the Pillory in ſome Market Town, and to have both his Ears nail'd, and to be diſabled to be a Witneſs in any Court, 5 *Eliz. c.* 9. And by the ſame Statute the procurers of Perjury are to forfeit 40 *l.* and if they have not Eſtate of that value, then Impriſonment for half a year, and Pillory, and to be admitted no Witneſs in any Court of Record.

Of

Of Forfeitures on theſe Acts, and how to be diſpoſed.

PER *Stat.* 13 *Eliz. c.* 7. The Commiſſioners are impowred to call before them all ſuch Perſons as are known, ſuppoſed or ſuſpected to have any Goods, Wares, *&c.* in his or their Cuſtody or Occupation, *&c.* and to examine them; and if ſuch perſon or perſons upon ſuch examination, do not diſcloſe, and plainly declare and ſhew the whole Truth of the Premiſſes, *&c. ut ſupra*, ſhall loſe and forfeit double the value of all ſuch Goods, *&c. which forfeitures ſhall be levied by the ſaid Commiſſioners of the Lands, Tenements, Hereditaments, Goods and Chattels of ſuch perſons ſo denying to ſwear, or not diſcloſing the whole Truth, by ſuch ways and means, and in ſuch manner and form as is before limited and appointed for the principal Offender or Offenders, Debtor or Debtors; and the ſaid forfeitures to be diſtributed or imployed for the ſatisfaction and payment of the Debts of the ſaid Creditors*, &c. prout ſupra.

And by the ſaid Statute of 13 *Eliz. c.* 7. It is Enacted, *That if at any time before, or after that any ſuch perſon becomes a Bankrupt, any perſons do fraudulently, by Covin or Colluſion, claim, demand, recover, poſſeſs or detain any Debts, Duties, Goods Chattels,*

Chattels, Lands or Tenements, by Writing, Truſt or otherwiſe, which were, or ſhall be due, belonging or appertaining to any ſuch Offender, other than ſuch as he or they can and do prove to be due by Right and Conſcience, for Mony paid, Wares delivered, &c. before the Commiſſioners, &c. that then every ſuch perſon (Concealer, *&c.*) *ſhall forfeit and loſe double as much as he or they ſhall ſo claim, demand, detain or poſſeſs, which ſaid forfeiture ſhall be levied, recovered and imployed in manner and form as is afore rehearſed.*

Provided alſo, and be it further Enacted, That if it ſhall fortune, the Creditors to be ſatisfied, and paid off their Debts and Duties, of, or with the proper Lands, Tenements, Goods, Chattels and Debts of the ſaid Bankrupts, or of, or with the ſame, and ſome part of the forfeitures of the ſaid double values, to be forfeited as is aforeſaid, and that there ſhall remain an overplus of the ſaid forfeitures, of the ſaid double values; That then the one moiety of the ſaid overplus, of the ſaid forfeitures of the double values ſo remaining, ſhall be by the ſaid Commiſſioners ſo executing the ſaid Commiſſion within convenient time after the levying thereof, paid unto the Queens Majeſty, her Heirs and Succeſſors, and the other moiety thereof ſhall be by the ſaid Commiſſioners employed and diſtributed to, and amongſt the Poor within the Hoſpitals, in

every City, Town or County where any ſuch Bankrupt ſhall happen to be.

Per Stat. 1 Jac. c. 15. It is Enacted, *That all and every Sum and Sums of Mony, which ſhall be forfeited by force of this ſaid Act, ſhall be ſued for, and recovered by the ſaid Creditors only, or any of them that will ſue for the ſame, by Action of Debt, Bill, Plaint or Information in any of the Kings Majeſties Courts of Record; and the Sum or Sums of Mony ſo recovered, the Charges of Suit being deducted, ſhall be diſtributed and divided towards the payment of the ſaid Creditors of the Bankrupt.*

If perſons ſuſpected to have Goods, *&c.* of the Bankrupt, do not upon their Examination diſcover the whole Truth, they forfeit double the value of the Goods.

If perſons fraudulently claim, detain, *&c.* any Lands, Debts, Duties, Wares, Goods, *&c.* of the Bankrupt, either before or after he becomes a Bankrupt, ſhall loſe double as much as they ſhall ſo claim, *&c.*

He that is guilty of Perjury, in his Examination, ſhall forfeit 20 *l.* and he that is guilty of Subornation of Perjury, ſhall forfeit 40 *l.* beſides other Penalties. *Vide ſupra.*

Inter-

Interrogatories.

AS to Interrogatories, they are to be framed according to the matters to be examined to; tho' ſome will have ready all the general Interrogatories that will fit the Examinations throughout all the Statutes. Some Commiſſioners again will not examine by Iterrogatories at all, for fear of ſome leading Queſtions may make Witneſſes frame Evaſions. But I cannot commend this way, it being a ſort of careleſs behaviour, and too ſlight for ſuch a weighty matter as this, conſidering the Penalties attending the Offenders againſt the Statutes. Beſides, at a Trial, Depoſitions may be made uſe of as Evidence (eſpecially againſt the party himſelf, or in caſe of the Death of Witneſſes) and to read a Depoſition without referring to Interrogatories, is to judge upon an Anſwer without knowing the ſtate of the Queſtion. I had thought to have inſerted here the Forms of ſome Comprehenſive Interrogatories, but there is ſuch variety of Examination in the executing this Commiſſion, that I ſhall leave that to the Ingenuity of the Commiſſioners, who may eaſily form Interrogatories, as the nature of the Caſe, and the Matter before them ſhall direct.

CHAP. VIII.

Of the Diſpoſition of the Bankrupts Eſtate, Freehold and Copyhold: Of Redemption of Lands, Mortgaged: Of Truſts, Sales, Settlements of Lands: What ſhall be accounted Fraudulent; and when, and in what Caſes Purchaſers are ſafe, with many late Caſes and Reſolutions thereon.

PER *Stat.* 13 *Eliz. c.* 7. 'The Commiſſioners ſhall have full power 'and authority to take by their 'Diſcretions, ſuch order and Direction 'with all (the Bankrupts) Lands or Tene-'ments, Hereditaments, as well Copy or 'Cuſtomary-hold as Freehold, which he 'or ſhe ſhall have in his or her own 'Right, before he or ſhe became Bank-'rupt; and alſo with all ſuch Lands, Te-'nements and Hereditaments, as ſuch per-'ſon ſhall have purchaſed or obtained for 'Mony, or other recompence jointly 'with his Wife, Children or Child, to the 'only uſe of ſuch Offender or Offenders, 'or of, or for ſuch Uſe, Intereſt, Right 'or Title, as ſuch Offender or Offenders 'then ſhall have in the ſame, which he or 'ſhe

'ſhe may lawfully depart withal, or
'with any perſon or perſons, of truſt to
'any ſecret uſe of ſuch Offender or Of-
'fenders; and alſo with his or her Mo-
'ny, Goods, Chattels, Wares, Merchandi-
'ſes and Debts whereſoever they may be
'found or known, and cauſe the ſaid
'Lands, Tenements, Fees Annuities, Of-
'fices, Goods, Chattels, Wares, Mer-
'chandiſes and Debts to be ſearched,
'viewed, rented and appraiſed to the View.
'beſt value they may, and by Deed in-
'dented, inrolled in one of the Queens
'Majeſties Courts of Record, to make
'Sale of the ſaid Lands, Tenements and Sale.
'Hereditaments, and of all Deeds, Wri-
'tings and Evidences touching only the
'ſame, belonging to ſuch Offender or
'Offenders, Debtor or Debtors; and
'alſo of all Fees, Annuities, Offices, Goods
'and Chattels, or otherwiſe to order the
'ſame for true ſatisfaction and payment
'of the ſaid Creditors; that is to ſay,
'to every of the ſaid Creditors a portion, Diſtribution.
'rate and rate-like, according to the
'quantity of his or their Debts; and
'that every Direction, Order, Bargain,
'Sale, and other things done by the ſaid
'perſons ſo Authoriſed, as is aforeſaid, in
'Form aforeſaid, ſhall be good and ef-
'fectual in the Law, to all intents, con-
'ſtructions and purpoſes, againſt the ſaid
'Offender or Offenders, Debtor or Deb-
'tors, his or their Wife or Wives, Heir

'and Heirs, Child and Children, and 'ſuch perſon or perſons as by ſuch joint 'Purchaſe, with the ſaid Offender or 'Offenders, as is aforeſaid, have, or ſhall 'have any Eſtate or Intereſt in the Pre-'miſſes; and againſt all other perſon and 'perſons, claiming by, from, or under 'ſuch Offender or Offenders, Debtor or 'Debtors, by any Act or Acts, had, made 'or done, after any ſuch perſon ſhall be-'come Bankrupt, as is aforeſaid; and 'alſo againſt the Lords of the Mannors, 'whereof the ſaid Copyhold or Cuſto-'mary Lands been holden, their Heirs, 'Succeſſors and Aſſigns, and every of 'them.

'Provided always, and be it Enacted, Copyhold. 'That all, and every perſon or perſons, 'to whom any ſuch Sale of Copyhold 'or Cuſtomary Lands or Tenements 'ſhall be made, ſhall before ſuch time 'as they, or any of them ſhall enter or 'take any profit of the ſame Lands or 'Tenements, agree and compound with 'the Lords of the Mannors, of whom 'the ſame ſhall be holden, for ſuch Fines 'or Incomes as heretofore hath been 'moſt uſual and accuſtomed to be yield-'ed or paid therefore; and that upon 'every ſuch agreement or compoſition, 'the ſaid Lords for the time being, at 'the next Court to be holden, at, or for 'the ſaid Mannors, ſhall not only grant 'to the ſaid Vendee or Vendees upon re-'queſt,

'queſt, the ſame Copy or Cuſtomary
'Lands or Tenements, by Copy of Court-
'Roll of the ſaid Mannors, for ſuch
'Eſtate or Intereſt as to them ſhall be
'ſold, and reſerving the Ancient Rents,
'Cuſtoms and Services; but alſo in the
'ſame Court admit them Tenants of
'the ſame Copy or Cuſtomary Lands,
'as other Copyholders of the ſame Man-
'nors have been wont to be admitted,
'and to receive their Fealty accordingly.

'And it is further Enacted, That if
'any perſon or perſons, which is, or ſhall
'be publiſhed and declared to be a Bank-
'rupt within this Act, ſhall at any time Purchaſe after
'after purchaſe any Lands, Tenements, Bankrupcy.
'Hereditaments Free or Copy, Offices,
'Fees, Goods or Chattels; or that any
'Lands, Tenements, Hereditaments Free
'or Copy, Offices, Fees or Chattels ſhall
'Deſcend, Revert, or by any means Deſcent after
'come to any ſuch perſon or perſons be- Bankrupcy.
'ing Bankrupt, as is aforeſaid, before
'ſuch time as their Debts due to their
'Creditors ſhall be fully ſatisfied and paid,
'or otherwiſe agreed for; that then the
'ſaid Lands, Tenements, Hereditaments
'as well Free as Copy, Offices, Fees,
'Goods and Chattels, ſhall by vertue of
'this Act be by the ſaid Commiſſioners
'or the major part of them, bargain-
'ed, ſold, extended, delivered and uſed
'for, and towards the payment of the

'ſaid Creditors, in ſuch like manner 'and form, as other the Lands, Tene-'ments, Hereditaments Free or Copy, 'Offices, Fees, Goods and Chattels of the 'ſaid Bankrupts, which they had when 'they were firſt declared to be Bank-'rupts, ſhould, or might have been bar-'gained, ſold, diſpoſed or uſed, by ver-'tue of this Act.

'Provided always, that this Act ſhall 'not extend to any Lands, Tenements 'or Hereditaments Free or Copy, which 'heretofore have been aſſured by any 'ſuch Bankrupt, or hereafter ſhall be 'aſſured by any Bankrupt, before he be-'comes a Bankrupt: So always that 'ſuch aſſurance be made *bona fide*, and 'not to the uſe of the Bankrupt himſelf 'only, or of his Heirs: And that the 'Parties to whoſe uſe ſuch aſſurance 'hath or ſhall be made, be not at, or 'before the making of ſuch aſſurance, 'privy or conſenting to the fraudulent 'purpoſe of any ſuch Bankrupt, to de-'ceive his Creditors.

Conveyance *bona fide.*

Per Stat. 1 *Jac. c.* 15. It is Enacted, 'That if any perſon which hereafter, is, 'or ſhall be Bankrupt, by intent of this 'Statute, ſhall convey or procure, or 'cauſe to be conveyed to any of his 'Children, or other perſon or perſons, 'any Mannors, Lands, Tenements, He-'reditaments, Offices, Fees, Annuities, 'Leaſes,

'Leaſes, Goods, Chattels, or transfer his Conveyance.
'Debts into other Mens Names, except
'the ſame ſhall be purchaſed, conveyed, Settlement.
'or transferred for, or upon Marriage of
'any of his or her Children, both the
'Parties Married, being of the years of
'Conſent, or ſome valuable conſiderati-
'on, ſhall be in the Power and Autho-
'rity of the Commiſſioners in this be-
'half to be appointed or the more part
'of them, to Bargain, Sell, Grant, Con-
'vey, Demiſe, or otherwiſe to Diſpoſe
'thereof, in as ample manner as if the
'ſaid Bankrupt had been actually ſeiſed
'or poſſeſſed thereof, or the Debts were
'in his own Name of the like Eſtate or
'Intereſt, to his or their own uſe, at
'ſuch time as he or ſhe became a Bank-
'rupt. And that every ſuch Grant, Bar-
'gain, Sale, Conveyance and Diſpoſi-
'tion of the ſaid Commiſſioners, or of
'the greater part of them, ſhall be good
'and available to all intents, conſtructi-
'ons and purpoſes in the Law againſt
'the Offender or Offenders, his Heirs,
'Executors, Adminiſtrators and Aſſigns,
'and ſuch Children and Perſons as ſhall
'be ſubject to this Statute, and againſt
'all other Perſon and perſons claiming
'by, from, or under ſuch Offender or
'Offenders, or ſuch ſaid other perſons
'to whom ſuch Conveyance ſhall be
'made by the ſaid Bankrupt, or by his
'means or procurement.

And

And as for the Power of the Commiſſioners, touching the Debts due to the ſaid Bankrupt, it is further Enacted,

Debts due to Bankrupt.

'That the Commiſſioners of Bankrupts 'or the greater part of them, ſhall have 'Power to Grant and Aſſign, or other-'wiſe to Order or Diſpoſe all, or any of 'the Debts due to, and for the benefit 'of the ſaid Bankrupt, by what perſon 'or perſons ſoever, or in what manner 'and form ſoever, to the uſe of the Cre-'ditors of the ſaid Bankrupt, according 'to the true intent of the Statute of 13 '*Eliz.* And that the ſame Grant Aſſign-'ment or Diſpoſition of the ſaid Debts 'in form aforeſaid, to be made by the 'ſaid Commiſſioners or the greater part 'of them, ſhall ſo veſt the Property, 'Right and Intereſt of the ſaid Debt 'and Debts, in the perſon or perſons of 'him, her or them, to whom it ſhall be 'Granted, Aſſigned or Ordered by the 'ſaid Commiſſioners or the greater part 'of them, as fully to all intents and pur-'poſes, as if the ſaid Bill, Bond, Bonds, 'Statutes, Recogniſances, Judgments or 'Contract, whereupon the ſaid Debt or 'Debts, Deed or Deeds ſhall ariſe or 'grow, had been made, to or with, or 'for the ſaid perſon or perſons, to whom 'the ſame ſhall be ſo Granted, Aſſigned 'or Diſpoſed by the ſaid Commiſſioners; 'and that after ſuch Grant, Aſſignment 'or Diſpoſition made of the ſaid Debts,

'that

'that neither the Bankrupt, nor any 'other to whom any ſuch Debt ſhall be 'due, ſhall have power to recover the 'ſame, nor to make any Releaſe or Diſ-'charge thereof; neither ſhall the ſame 'be Attached as the Debt of the Bank- Attachment. 'rupt, or ſuch ſaid other perſon or per-'ſons to whom the ſame ſhall be due, 'by any other perſon or perſons, accord-'ing to the Cuſtom of the City of *Lon-'don*, or otherwiſe; but that the Party 'or Parties to whom the ſame Debts ſhall 'be aſſigned, ſhall have like remedy to 'recover the ſame, as fully and lawfully 'in the Name or Names of the perſon or 'perſons to whom the ſame ſhall be ſo 'Granted, Aſſigned or Ordered by the 'ſaid Commiſſioners, in all reſpects and 'purpoſes, as the party himſelf might 'have had, any Law, Statute, Uſe or 'Cuſtom to the contrary thereof, in any 'wiſe notwithſtanding.

Per Stat. 21 *Jac. c.* 19. It is Enacted, 'Tha 'the ſaid Commiſſioners, or the greater 'number of them, ſhall have Power by 'Deed indented and inrolled within ſix 'Months after the making thereof, in 'ſome of his Majeſties Courts of Record 'at *Weſtminſter*, to Grant, Bargain, Sell 'and Convey any Mannors, Lands, Tene-'ment or Hereditaments, whereof any 'Bankrupt is, or ſhall be in any ways ſei-'ſed of any Eſtate in Tail, in Poſſeſſion, Lands Entail'd. 'Re-

'Reverſion or Remainder and whereof no 'Reverſion or Remainder is, or ſhall be 'in the King's Majeſty, his Heirs or Succeſſors of the Gift or Proviſion of his 'Majeſty, his Progenitors, his Heirs or 'Succeſſors, to any perſon or perſons, for 'the relief and benefit of the Creditors 'of all ſuch Bankrupts; and that all, 'and every ſuch Grants, Bargains, Sales 'and Conveyances ſhall be good and 'available in the Law, to ſuch perſon or 'perſons, and their Heirs againſt the ſaid 'Bankrupts, and againſt all, and every 'the Iſſues of the Body of ſuch Bankrupts, 'and againſt all and every perſon and 'perſons, claiming any Eſtate, Right, 'Title or Intereſt, by, from or under 'the ſaid Bankrupts, after ſuch time as 'ſuch perſon ſhall become Bankrupt, and 'againſt all, and every other perſon and 'perſons whatſoever, when the ſaid 'Bankrupt by Common Recovery, or o-'ther ways or means might cut off or de-'bar from any Remainder, Reverſion, 'Rent, Profit, Title or Poſſibility, into, 'or out of the ſaid Mannors, Lands, Te-'nements or Hereditaments.

'And it is further Enacted, That if any 'Bankrupt ſhall Grant, Convey or Aſ-'ſure any Lands, Tenements, Hereditaments, Goods, Chattels, or other Eſtate 'unto any perſon or perſons, upon Con-'dition or Power of Redemption at a 'day to come, by payment of Mony or 'other

Mortgages.

'otherwiſe; That it ſhall and may be 'lawful to, and for the ſaid Commiſſi-'oners, or the greater part of them, be-'fore the time of the performance of 'ſuch Condition, to Aſſign and Appoint 'under their Hands and Seals, ſuch per-'ſon or perſons as they ſhall think fit, 'to make tender or payment of Mony, 'or other performance according to the 'nature of ſuch Condition, as fully as 'the Bankrupt might have done: And 'that the ſaid Commiſſioners or the 'greater part of them, ſhall after ſuch 'Tender, Payment or performance, 'have power to Sell and Diſpoſe of ſuch 'Lands, Tenements, Hereditaments, 'Goods and Chattels, and other Eſtates 'ſo Granted, Conveyed or Aſſured, up-'on Condition, to and for the Benefit of 'the Creditors, as fully as they may Sell 'or Diſpoſe of any the Eſtate of the 'Bankrupt.

General

General Notes of Sales by Commiſſioners.

OBſerve, That if Commiſſioners ſell the Lands of the Bankrupt, and one of them hath right to the Land ſo ſold, his right by this will not be extinct, *Godb. p.* 319.

Where the Sale of the Commiſſioners may be defeated.

Note, It's laid down in *Jones Rep. p.* 203. *In* Awdley *and* Halſey's *Caſe, as a Rule, where the owner of Goods or Lands, by his own Act may not controul a Gift or a Charge; there if he become a Bankrupt, the Gift or Charge may not be defeated.* If a man Bargain and Sell Lands, and before Enrolment, he becomes a Bankrupt, and after the Deed is inrolled, there the Bargainee ſhall hold the Land diſcharged from the Commiſſioners of Bankrupts: So if a Man gives Goods or Lands upon a precedent Condition, and after becomes a Bankrupt, and after the Condition is performed, this defeats the Power of the Commiſſion. If a Man makes a Feoffment, or gives Goods upon Condition, and after becomes a Bankrupt, and the Lands or Goods are ſold by the Commiſſioners, and afterwards the Condition is broken, and the Feoffor or Donor re-enter or re-ſeiſe the Goods, the Sale is defeated.

The Explication of theſe Statutes will be better illuſtrated with the enſuing Caſes and Conſiderations.

Firſt as to the Bankrupts real Eſtate. { Freehold. / Copyhold.

Of the Sale and Diſpoſition of the Freehold Eſtate of the Bankrupt.

I. SUch Lands which are in his own poſſeſſion at the time of the Bankrupcy, as an Eſtate in Fee, in Tail for Life or Years.

II. Remainder and Reverſion.

III. That which he purchaſed, or deſcended to him afterwards.

IV. Settlements on Marriage, or on Wife and Children, and Eſtates conveyed in in Truſt, and in reference to Purchaſers.

V. Lands Mortgaged.

VI. Lands extended by ſuch as pretend to be Accountants to the King, or Goods ſeiſed, *vide infra ſub Tit.* Diſpoſal of the Perſonal Eſtate, *&c.*

I. Lands

I. Lands in his own poſſeſſion at the time of his becoming a Bankrupt.

1. What he hath in his own Right, as Eſtate in Fee, Tail, Life or Years, Freehold or Copyhold. The Commiſſioners may ſell all Intail'd Lands (except ſuch whereof the Reverſion or Remainder in the King, of the Gift or Proviſion of the King) and ſuch Sale ſhall be good againſt the Bankrupt and his Iſſue, and all thoſe in Remainder or Reverſion, which the Bankrupt by common Recovery or otherways might cut off or debar. So that in ſuch Caſe the Sale by Commiſſioners ſhall bar thoſe in Reverſion or Remainder, as much as if the Bankrupt himſelf had ſuffered a Common Recovery; and obſerve the words in Stat. 21 Jac. *Cut off or Debar from any Remainder, Reverſion, Rent, Profit, Title or Poſſibility, into, or out of any Mannors*, &c.

Intail'd Lands.

Contingent Eſtate.

Son.

I will put this Caſe. Lands are ſetled to *A.* and *B.* for their Lives, and after their Deceaſes, to the uſe of the firſt Son of their Bodies, lawfully to be begotten, and to the Heirs Males of ſuch firſt Son, and for want of ſuch Iſſue, to the uſe of the ſecond Son, *&c.* in Tail Male, and ſo to the tenth Son. A. becomes a Bankrupt before he hath a Son: Whether the Commiſſioners may ſell theſe Lands, and make to the Purchaſer a Good Eſtate? I hold they may; for tho'

tho' A. be not Tenant in Tail, but bare Tenant for Life, yet the words in the Statute being *the Bargain and Sale ſhall be good againſt all and every other perſon and perſons whomſoever, whom the Bankrupt by Common Recovery or otherwiſe might cut off and debar from any Remainder, Reverſion, Rent, Profit, Title or Poſſibility:* It ſeems this Bargain and Sale ſhall be good. For A. the Father, before Iſſue, by his bare Feoffment might deſtroy the contingent Eſtate, as it is in *Archer's* Caſe. But were the Settlement made ſo as to ſupport the contingent Remainder (as is uſually done) ſo that the Father could by no means debar it by any act he could do, then it would make a greater Queſtion; and yet if the Commiſſioners could not ſell in ſuch caſe, as Settlements are generally made now; the Act in this Point might be eaſily eluded. (This is to be underſtood of voluntary Settlements.)

Voluntary Settlement.

A Man makes a Leaſe of certain Lands to A. B. for three Lives to begin after the death of J. S. if the three Lives ſhall ſo long live. A. B. becomes a Bankrupt. This Leaſe to A. B. is but a poſſibility, for J. S. may ſurvive all the three Lives, and ſo it is a thing not grantable. Yet I think the Commiſſioners may ſell this within the intent of theſe words; for tho' A. B. cannot properly grant this, yet it is ſuch a thing as he may forfeit or extinguiſh.

Poſſibility.

A. is Tenant in Tail, Remainder to B. in Tail. B. becomes a Bankrupt, A makes a Feoffment in Fee and dies, and the Commiſſioners ſell theſe Lands before B. hath recovered in a Formedon, who ſhall bring the Formedon? Or whether the Act doth veſt the Eſtate in the Purchaſer, that he may enter, and have Ejectment? I hold that this Sale is good; for tho' the Remainder Man claims no Eſtate under the Bankrupt, yet the Bankrupt by Common Recovery might have barred him; and the Act ſaith ſuch Bargains and Sales ſhall be good, and the Aſſignee ſhall bring a Formedon.

Eſcheat.

A Bankrupt commits Felony, the Land ſhall not Eſcheat, but the Commiſſioners may ſell it; this is to be underſtood of a Common Lord.

Bargain and Sale, and Bargainor becomes a Bankrupt before Inrollment.

If one Bargain and Sell his Land, and before Inrollment becomes a Bankrupt, this Land may not be ſold by the Commiſſioners, according to the Rule put before by *Jones*: But if he makes a Feoffment, and a Letter of Attorney to give Livery, and then becomes a Bankrupt before the Seiſin delivered, theſe Lands in ſuch caſe may be ſold, *B. R.* 4 *Car.* 1. The reaſon of the difference is, in the firſt Caſe the Bargainee is in by the Bargain and Sale, and not by the Inrollment; and the Bankrupt could not by his own Act defeat this; but no Eſtate in the other Caſe paſſeth at all till the Livery

Livery be executed: And then in the laſt Caſe, his Letter of Attorney is revocable, and his becoming a Bankrupt before the Eſtate executed, is *quaſi* a Countermand or Revocation in Law. The firſt Reaſon is beſt.

2. Lands ſettled in other Mens Names, in Truſt for the Bankrupt. Lands in other mens names.

It is plain theſe are within the Statute.

If a Bankrupt grant his Lands or Goods, or transfer his Debts in other Mens Names, except to his Children upon Marriage (they being at the Age of Conſent) or upon valuable Conſideration, the Commiſſioners notwithſtanding may ſell them, and the Sale ſhall be good.

But if one be a Merchant, and not in Debt, and he purchaſe for another, or give to another, and there be no fraud in it to deceive Creditors, this is good, *March.* 12. *p.* 32.

Of Lands Purchaſed by, or Deſcended or Deviſed to the Bankrupt ſince he was a Bankrupt.

PER Stat. 13 Eliz. *If any perſon who is or ſhall be declared to be a Bankrupt, ſhall at any time hereafter purchaſe any Lands, Tenements, Hereditaments Free or Copy, or Offices, Fees, Goods or Chattels; or that any Lands, Tenements, Hereditaments Free or Copy, Offices, Fees, Goods or Chattels ſhall deſcend, revert or by any means come to any Bankrupt before ſuch times as Debts due to their Creditors ſhall fully be ſatisfied and paid, or otherwiſe agreed for, then the ſaid Lands,* &c. *ſhall be ſold as other Lands,* &c. *which the Bankrupt had at the time of his becoming a Bankrupt. Vid. ſupra.*

This Clauſe is to be underſtood of ſuch Lands which deſcend or revert to him, and which were in a remote poſſibility of ever hapning. As ſuppoſe a Father ſeiſed of Lands in Fee, hath iſſue a Son, and the Father dies, and the Uncle is a Bankrupt, then the Son dies, and the Lands deſcend to the Uncle, theſe could not be ſold by the Commiſſioners, without this Clauſe in the Statute. Tho' Reverſions after Eſtates for Life or Years might have been ſold by the other Clauſe of this Statute, or any Eſtate wherein the Bankrupt hath an Intereſt *in futuro.*

But

But tho' a Bankrupt hath the Remainder or Reverſion in Fee after an Eſtate in Tail, yet this cannot be ſold by Commiſſioners till it fall, becauſe the Tenant in Tail hath power to bar this Remainder or Reverſion.

Suppoſe a Judicial Office, or Office of Truſt, which cannot be executed by a Deputy, be granted for Life, and the King grants the Reverſion to J. S. for Life, he who hath the Grant of the Reverſion becomes a Bankrupt, and then the Office falls, how ſhall the Commiſſioners diſpoſe of this Office? They cannot execute it themſelves, neither can they put in a Deputy. I conceive if the Officer abſents, he forfeits his Office, and then the King grants it over; but this is no relief to the Creditors: Therefore Mr. *Stone* thinks well, the Statute doth not mean ſuch Offices of Truſt, which are annexed to the Party; but other Offices of Inheritance, as Keeper of a Foreſt, Warden of the Fleet, *&c.* Offices.

Land is deviſed to a Bankrupt, the Commiſſioners may ſell, and the Bankrupt ſhall not wave the Deviſe. Of Land deviſed to a Bankrupt.

Of Lands Mortgaged, or Eſtates on Condition.

PER Stat. 31 Jac. c. 19. *The Commiſſioners may Aſſign and Appoint ſuch Perſon as they may think fit, to make tender or payment of the Mony, as fully as the Bankrupt might have done; and after ſuch tender or payment they ſhall have power to ſell,* &c. *Vid. ſupra.*

This is in Caſe the Bankrupt hath Mortgaged any Lands to another. But ſuppoſe Lands are Mortgaged to him; as a Feoffment in Fee for 500 *l.* is made to him and his Heirs, provided that if the Feoffor do not pay ſuch a ſum of Mony ſuch a day, then for a further ſum the Feoffor is to make it an Eſtate abſolute. The Feoffee becomes a Bankrupt, and the Mony is not paid at the day, the Commiſſioners have not power by this Act to force the Feoffor to make an abſolute Fee, but Chancery will compel him.

Condition of a Feoffment, that if the Feoffor pay not ſuch a ſum, then for a further ſum the Feoffor to make the Eſtate abſolute.

A. B. makes a Leaſe, rendring Rent with a Clauſe of Re-entry, and then becomes a Bankrupt and abſconds, *&c.* who ſhall enter if the Rent be unpaid? The Aſſignee of the Commiſſioners, eſpecially if the words be in, that then it ſhall be lawful for the Leſſor, his Heirs or Aſſigns to Re-enter; for tho' the Aſſignees

nees of the Commiſſioners are not the Aſſignees in Fact to the Bankrupt, yet they are ſo in Law; and eſpecially by the Equity of this Statute: And ſo it ſhould ſeem to be in other Caſes of Entries for Conditions broken, or Diſtreſs for Arrears.

If a Leaſe is made to A. B. for 21 years, provided if he do ſuch an Act, then he ſhall have Fee; A. B. becomes a Bankrupt and abſconds. *Quære* if the Aſſignee of the Commiſſioners ſhall perform this Act, and ſo gain the Fee? *Vide infra.* Conditions.

A Merchant makes a Feoffment in Fee, upon Condition upon payment of Mony, to Re-enter, he becomes a Bankrupt, the Commiſſioners may tender the Mony at the day, and ſell the Land. Commiſſioners tender the Mony on a Mortgage.

Of Lands whereof the Bankrupt is jointly ſeiſed.

IT is clear, that if two be jointly ſeiſed of Lands, and one becomes a Bankrupt, his moiety may be ſold by the Commiſſioners, nay, tho' he be dead, and Survivorſhip ſhall not take place, *Vide infra.*

Put the Caſe, there are two Jointenants, and they are diſſeiſed; one of the Jointenants becomes a Bankrupt, and then dies; I queſtion whether the Commiſ-

ſioners ſhall ſell in this Caſe? for the words of the Statute of 13 *Eliz.* are, *Such Uſe, Intereſt, Right or Title as ſuch Offender might lawfully depart with:* Now before Entry he could not grant his moiety; yet he may releaſe before he dies.

Two Women Jointenants of a Leaſe for years; and one takes Husband who becomes a Bankrupt; the Commiſſioners may diſpoſe of the Intereſt of a Moiety; and yet *quære*, for Chattels real are given to the Husband if he ſurvive; but if the Husband die before the Wife, ſhe ſhall have it.

The Wives Land.

A Bankrupt hath Land in the Right of his Wife, it may be ſold during the Coverture; and if ſhe be a Feme Merchant the whole ſhall be ſold.

A Feme ſole is ſeiſed of Land in Fee, B. contracts with C. an Ironmonger, and D. a Working Smith only (for Mony paid by them) to marry A. and then that after the ſaid Marriage, he and A. will levy a Fine of the Land of A. to the uſe of C. and D. and their Heirs: The Marriage is had, the Fine is levied, C. is outlawed, D. abſents. In this Caſe C. is a Bankrupt, but not D. and the ſale of the moiety of the Land is good, *per* Mr. *Stone.*

The Dower of a Bankrupts Wife ſhall never be ſold. *Aliter*, If ſhe marry one that is a Bankrupt.

Two

Two Jointenants, one is a Bankrupt, the Commiſſioners ſeiſe a moiety, the Bankrupt dies, no part ſhall be ſold by *Stat.* 13 *Eliz.* but by *Stat.* 1 *Jac.* a moiety may be ſold; for that Statute ſaith *the Commiſſioners ſhall proceed as if he were living.*

Lands { *Setled.* / *Sold.*

Settlements: What ſhall be accounted Fraudulent and ſhall be avoided, and the Sale by the Commiſſioners good, and what not.

Vide ſupra Stat. 1 Jac. c. 15. *Conveyance to Children, except on Marriage, or ſome Valuable Conſideration.*

Vide Supra, Criſp *and* Plats *Caſe*, 1 Croke, 548.

IN conſideration of Marriage; a man makes a Conveyance to the uſe of himſelf and his Wife, and afterwards becomes a Bankrupt; a Commiſſion is taken out againſt him, and the Lands are ſold by the Commiſſioners; the Sale adjudged good, and the Deed fraudulent. In this Caſe within half an year after this Settlement he became a Bankrupt; ſo as there ſeems to be fraud in the Conveyance; but this is not expreſt in the Pleading,

ing, as it might have been; and this is not in diſpute upon a Special Verdict, but comes in queſtion on point of pleading, which is to be taken ſtrongly againſt him that pleads it; and he hath not expreſt any Valuable Conſideration as he might have done; as Conſideration of a Portion, or performance of Articles made upon Marriage, or that the Wife had joined in ſelling ſome part of the Land.

Valuable Conſideration.

Wife, Children.

The Wife is within the Statute 1 *Jac.* and the providing for Wife and Children is providing for himſelf, *Stiles Rep.* 288, 289. *Tucker* and *Coſh.* But I have ſeen this Caſe reported by a Grave Serjeant at Law, that the Land may not be ſold, *quia guerdon pudicitiæ.*

All fraudulent Conveyances, to deceive Creditors, are within this Statute.

Fraudulent Deed.

A fraudulent Deed muſt be ſo at the beginning, for ſubſequent fraud cannot make it ſo.

If a Man purchaſe Land after the time of his Trading, and his being in Debt, and do purchaſe it in the Name of his Wife or Children fraudulently, this will be liable to ſale. *Aliter*, If it be purchaſed before he becomes to be a Merchant, *Marſh Rep.* 34. A. purchaſed Copyhold to him and his Son for their Lives, the Remainder to his Wife in Fee; and after this becomes a Merchant and a Bankrupt, and ſolely took the Profits till he became a Bankrupt, this ſhall not be

be ſold by the Commiſſioners, *Vide ſupra Criſp*'s Caſe

A Settlement made by the Husband for the Jointure of the Wife, reciting that the Wife had joined with the Husband to ſell part of the former Jointure in which he and ſhe were Tenants for Life, the Remainder in Tail to the firſt and tenth Son, Remainder to his Heirs; by *Hales* at a Trial at Bar, this is not fraudulent, tho' he alone having no Iſſue might bar this contingent Remainder, *B. R.* 24 *Car.* 2. *Scot* and *Bell.*

Wife joins with the Husband in ſelling part of her former Jointure.

In an Aſſiſe between Creditors and the Bankrupts Son. It was found, that the Father by Indenture, in conſideration of love which he bore to his Son, and for natural affection to him, bargained, ſold, gave, granted and confirmed the Land unto him and his Heirs; this Deed was Inrolled: This Land ſhall not paſs unleſs Mony had been paid, or the Eſtate executed, for the Uſe ſhall not paſs. *Crok Jac. p.* 127. *Osborn* and *Churchman.*

Bargain and Sale. Conſideration.

In a Trial at Bar; the Son and Daughter of Sir *Anthony Bateman* were Defendants in Ejectment; the Defendants admitted the point of Sir *Anthony*'s Bankrupcy, but ſet up a Conveyance made by Sir *Anthony* to them for the payment of 1500 *l.* apiece, being Mony given to them by their Grandfather, Mr. *Ruſſel*; to whom Sir *Anthony* took out Letters of

Voluntary Conveyance or not.

of Adminiſtration; *per Hales*, It is a Voluntary Conveyance, unleſs that you can prove that Sir *Anthony* had Goods in his Hands of Mr. *Ruſſels* at the time of the executing it; ſo they proved that he had, and there was a Verdict for the Defendants, *Mod. Rep.* 76. Sir *Anthony Bateman*'s Caſe.

Settlement.

A Man may ſettle Lands on his Son before he be a Bankrupt, and if it be not by fraud and to deceive Creditors, it ſhall be good, (and the fraud muſt be found by the Jury) the Statute ſaith, *the Sale ſhall be good againſt ſuch Offender*, and he is no Offender till he is a Bankrupt, *Jones p.* 438. *Criſp* and *Platt. Vide ſupra.*

What Sales and Aſſurances ſhall be avoided, and where the Purchaſers are ſafe or not.

IT is provided by *Stat.* 13 *Eliz. That the ſaid Act* (*which enables the Commiſſioners to ſell the Bankrupts Lands*) *ſhall not extend to any Lands, Tenements or Hereditaments Free or Copyhold, which heretofore have been aſſured by any ſuch Bankrupt, or hereafter ſhall be aſſured by any Bankrupt, before he became a Bankrupt. So always that ſuch aſſurance be made* bona fide, *and not to the uſe of the Bankrupt himſelf only, or of his Heirs; and that the*

Parties

Parties to whoſe ſuch aſſurance hath, or ſhall be made, be not at or before the making ſuch aſſurance privy or conſenting to the fraudulent purpoſes of any ſuch Bankrupt to deceive his Creditors.

And per Stat. 21 Jac. c. 19. *It is provided, That no Purchaſer, for good and valuable Conſideration, ſhall be impeached by vertue of this Act, or any other Acts heretofore made againſt Bankrupts, unleſs the Commiſſion to prove him or her a Bankrupt, be ſued forth againſt ſuch Bankrupt within five years after he or ſhe ſhall become a Bankrupt.*

Any Sale of Lands and Goods by a Bankrupt before he comes in Debt, or before his Trading, is without queſtion good; and ſo are all the Acts he doth before he comes to appear to be a Bankrupt, *Marſh Rep.* 34.

If one be a Merchant, and not in Debt, and he purchaſe for another, or give to another, and there be no fraud in it to deceive the Creditors, this is good, *Marſh* 32.

Sir *John Harriſon* Merchant, ſeiſed of Lands and indebted to divers perſons; on Action brought againſt him, he conceals himſelf, for which he was outlawed, and *An.* 43 becomes a Bankrupt, *An.* 47 he acknowledgeth two Judgments to *Andrews*, and *An.* 1648 he makes a Leaſe to the Plaintiff; *An.* 1653 Commiſſion iſſues

iſſues out againſt him, and extends by Elegit 1650. the Plaintiff juſtifies as coming in under Valuable Conſideration of 5000 *l. Per Glyn* he is a Bankrupt by the Outlawry; and alſo by the fraudulent Leaſe: But he ſhall be accounted a Bankrupt from the firſt Act of Bankrupcy, 2 *Siderfin p.* 115. *Radford verſus Bludworth*; and *p.* 176. the Queſtion was, if the Plaintiff ſhall be aſſured by the Clauſe of 21 *Jac.* 19. as being a Purchaſer, on a Valuable Conſideration, the Bankrupt having ſold above five years before the Commiſſion ſued out; when the Commiſſion of Bankrupts iſſues out the Creditors ſhall have all the benefit of all his Eſtate which he had *Anno Dom.* 1643. Excepting Purchaſers for a Valuable Conſideration: His being a Bankrupt after the Sale, that will not hinder Judgment for the Purchaſer, 1 *Keb.* 11. *Bradford* and *Bludworth.*

To be accounted a Bankrupt from the firſt Act of Bankrupcy.

A Man purchaſeth Lands of one who is a Bankrupt, for a Good and Valuable Conſideration; and a Commiſſion is not taken out within five years; this Purchaſer ſhall not be Impeached. But if one purchaſeth Land for Good and Valuable Conſideration, before the Vendor becomes a Bankrupt, it's no queſtion but he is ſafe; and thus is this Clauſe to be underſtood.

J. H.

J. H. a Bankrupt was committed two Months, *An.* 1651. and recommitted for another Act in 1657. then the Bankrupt ſells the Term for years, whereof he was poſſeſſed, to the Defendant, and in 1660 the Commiſſioners ſold to the Plaintiff. This Commiſſion ſhall not relate to the firſt Act in 51. for the words of the Act are not, *after he ſhall firſt be a Bankrupt*; for then the earlier being a Bankrupt, would after five years be a perpetual *Superſedeas* to all Tradeſmen. But if one hath ſold, and then five years paſs without any Act of Bankrupcy, the Purchaſer is ſafe, and no after-Act can hurt him. But where the Bankrupt continues in Poſſeſſion, any after-Act is ſufficient to bind the Term, 16 *Car.* 2. *Spencer* and *Vanacre.*

Where it ſhall not relate to the firſt Act.

A Merchant ſells Land *bona fide* to J. S. and after becomes a Bankrupt, J. S. may chooſe to ſhew his Evidences.

Monſtre les Faits.

Concerning the Sale of Copyhold Lands.

YOU may ſee in the recital of the *Stat.* 13 *Eliz. c.* 7. that Copyhold Lands are to be ſold by Deed Indented and Inrolled in any of his Majeſties Courts of Record (as other the Bankrupts Lands) but by the ſame Statute it is provided, *That all perſons to whom any ſuch Sale ſhall be made, ſhall before ſuch time as*

as they ſhall enter or take any profits of the ſame, agree and compound with the Lord of Mannor, of whom the ſame ſhall be holden, for ſuch Fines or Incomes as heretofore hath been moſt uſual and accuſtomed to be yielded or paid therefore: And upon every ſuch compoſition, the Lord for the time being, at the next Court to be holden at, or for the ſaid Mannor, ſhall not only grant to ſuch Vendee upon requeſt, the ſame Copy or Cuſtomary Lands or Tenements by Copy of Court-Roll of the ſaid Mannors for ſuch Eſtate or Intereſt as to them ſhall be ſold, and reſerving the ancient Rents, Cuſtoms, and Services; but alſo in the ſame Court, admit them Tenants of the ſame Copy or Cuſtomary Lands, as other Copyholders of the ſame Mannor have been wont to be admitted, and to receive their Fealty accordingly.

Fines.

Admittance.

Copyhold Lands are within all the Statutes of Bankrupcy, *Croke, Car.* 550. *Criſp* and *Platt.*

Title to a Copyhold, how to be made by Commiſſioners.

Title to a Copyhold cannot be made by the Commiſſioners without ſurrender or admittance, 1 *Keb.* 24. *Croke Car.* 596.

The Eſtate veſted before admittance.

It is adjudged in *Croke Car.* 569. in *Parker* and *Bleeks* Caſe, that by Bargain and Sale, made by the Commiſſioners of Bankrupcy, the Eſtate of the Copyholder is veſted in the Bargainee before admittance, tho' he may not enter and take the Profits till admittance: The

Bargain

Bargain and Sale binds the Copyholder and bars his Eſtate, and he is no Copyholder after the Bargain and Sale enrolled: And when the Bargainee is admitted by the Lord, it ſhall have relation to the Bargain and Sale; and the Copyholder dying, his Wife ſhall be bar'd of her Widows Eſtate.

A Bankrupt purchaſeth a Copyhold, and the Tenant ſurrenders into two Tenants Hands to the uſe of the Bankrupt, and now he will not be admitted. Mr. *Stone* makes ſome Quere if this may be ſold by the Commiſſioners, but he conceives they may; and the Vendee may pay the admittance.

Tenant by Copy is diſſeiſed, and the Diſſeiſor is admitted Tenant by the Lord. The Lord Bargains and Sells the Manor to J. S. in Fee: Diſſeiſee becomes a Bankrupt, the Commiſſioners may ſell the Copyhold, and the Vendee ſhall compound with the Bargainor, *Stone* 142.

CHAP. IX.

Of the diſpoſal of the Perſonal Eſtate, or Goods of the Bankrupt: How and where the Goods of a Bankrupt, liable to Execution may be ſold by the Commiſſioners, and where not: Of Truſts, and Bonds taken in the Bankrupts Name, with ſeveral Caſes and Reſolutions.

PER Stat. 13 Eliz. c. 7. *The Commiſſioners have Power to take ſuch Order and Directions by their Diſcretions, with the Bankrupts Mony, Goods, Chattels, Wares, Merchandiſes and Debts, whereſoever they may be found or known, and cauſe the ſaid Goods, Chattels, Wares Merchandiſes and Debts to be ſearched, viewed and appraiſed to the beſt value they may, and by Deed Indented and Inrolled,* &c. *to make ſale of them, or otherwiſe to order the ſame for true ſatisfaction and payment of the ſaid Creditors.*

And by another Clauſe in the ſaid Statute, *The Commiſſioners have power to ſell all the Goods and Chattels that the Bankrupt ſhall purchaſe, after he became Bankrupt, and all ſuch Goods and Chattels that ſhall any wiſe come to him before ſuch time that the Debts due to the Creditors*

Purchaſe.

are

are fully ſatisfied and and paid, or otherwiſe agreed for.

Per Stat. 1 Jac. c. 15. *Leaſes, Goods, Chattels or Debts of the Bankrupt, by him conveyed, or procured to be conveyed or transferred to any of his Children, or other perſon or perſons, except the ſame ſhall be purchaſed, conveyed or transferred for, or upon Marriage of any of his or her Children, both the parties Married being of years of Conſent, or ſome Valuable Conſideration, or transfer his Debts into other Mens Names, ſhall be by the Commiſſioners Bargained, Sold, Granted, Demiſed or otherwiſe Diſpoſed of, in as ample manner, as if the ſaid Bankrupt had been actually ſeiſed or poſſeſſed thereof, or the Debts were in his own Name of the like Eſtate or Intereſt to his or their own uſe, at ſuch time as he or ſhe became a Bankrupt; and that every ſuch Bargain, Sale and Diſpoſition of the Commiſſioners ſhall be good and available to all Intents, Conſtructions and Purpoſes in the Law againſt the Offender or Offenders, his Heirs, Executros, Adminiſtrators and Aſſigns, and ſuch Children and Perſons as ſhall be ſubject to this Statute, and againſt all other perſon and perſons, claiming by, from, or under ſuch Offender or Offenders, and ſuch ſaid other perſons to whom ſuch Conveyance ſhall be made by the ſaid Bankrupt, or by his means or procurement.*

Truſts.

Debts transferred in other Mens Names.

Per Stat. 21 Jac. c. 19. *If it happen any Lands, &c. Good, Chattels, Debts, or other Eſtate of any Bankrupt to be extended after ſuch time as he or ſhe became a Bankrupt, by any perſon or perſons, under colour or pretence of his or their being Accountant, or any ways indebted to the Kings Majeſty; then ſhall the Commiſſioners examin upon Oath, whether the ſaid Debt were due to ſuch Debtor or Accountant, upon any Bargain or Contract originally made between ſuch Accountant and the ſaid Bankrupt, &c. and his or their Servants; and if the ſaid Bargain or Contract was originally made to, and with any other perſon or perſons, then the ſaid Debtor or Accountant; or for the Uſe or Truſt of any other perſon or perſons, then the ſaid Commiſſioners ſhall diſpoſe of ſuch Lands, &c. Goods and Chattels, &c. to, and for the uſe of the Creditors; and that the Order and Diſpoſition of the ſaid Commiſſioners ſhall be good againſt the ſaid Extent; and the Bargainees ſhall have good Remedy, to have, demand and recover the ſame againſt ſuch perſon or perſons as ſhall detain the ſame.*

Extent.

Kings Accountant.

And by the ſaid Statute of 21 Jac. c. 19. *For that it often falls out, that many perſons before they become Bankrupts, do convey their Goods to other Men, upon good Conſideration, yet ſtill do keep the ſame, and are reputed the owners thereof, and diſpoſe the ſame as their*

Goods transferred, and yet ownerſhip kept on foot.

their own: It is Enacted, That if at any time hereafter, any perſon or perſons ſhall become a Bankrupt, and at ſuch time as they ſhall ſo become a Bankrupt, ſhall by the conſent and permiſſion of the true owner and proprietor, have in their poſſeſſion, order and diſpoſition, any Goods or Chattels, whereof they ſhall be reputed owners, and take upon them the Sale, Alteration or Diſpoſition as Owners, that in every ſuch Caſe, the ſaid Commiſſioners or the greater part of them, ſhall have Power to Sell and Diſpoſe the ſame, to, and for the benefit of the Creditors, as fully as any other part of the Bankrupts Eſtate: And for the better payment of Debts, and diſcouraging men to become Bankrupts, per *the ſame Statute, If the Bankrupt ſhall grant any Goods, Chattels or Eſtate unto any perſon or perſons, on condition or power of Redemption at a day to come, then the Commiſſioners ſhall aſſign ſome perſon to make tender or payment of the Mony, or other Performance, according to the Nature of the Condition, as fully as the Bankrupt might have done: And after ſuch tender or Payment, ſhall ſell the ſaid Goods and Chattels ſo conveyed or granted,* &c. *Vide* this Paragraph at large *ſupra.*

Mortgage, Pawns.

So that you ſee the Commiſſioners have Power to Sell or Diſpoſe the Bankrupts Perſonal Eſtate, which he had, and was poſſeſſed of at the time of his becoming a Bankrupt; and alſo all ſuch

Goods and Chattels which the Bankrupt ſhall purchaſe, or which ſhall come and accrue to him after he became a Bankrupt.

Obſerve, They muſt be ſearched, viewed and appraiſed.

Sale of Goods by a Bankrupt, after Commiſſion awarded, is void, albeit the Commiſſioners be never ſeiſed of the Goods, *Moore Caſe* 805. *Smith* and *Mills*.

Deed Indented. View.

This Statute ſaith, Sale by Commiſſioners muſt be by Deed Indented, and that after view of the Goods; yet a Sale by any other Deed, and before the view, is good, 2 *Rep.* 26. The Caſe of Bankrupts.

Goods ſold in Market *overt*.

The Goods of the Bankrupt lie liable to the Sale of the Commiſſioners, notwithſtanding the Bankrupt had ſold them in Market *Overt*, this Sale is avoided by relation, *Siderfin. p.* 272. 2 *Keb.* 33. in *Baly* and *Bunnings* Caſe.

How, and where the Goods of a Bankrupt, liable to Execution, may be ſold by Commiſſioners, and how, and where not.

A. Becomes a Bankrupt after an Extent, and before a *Liberate*, and the Commiſſioners ſell theſe Goods to Creditors, *Per Cur'* they cannot be ſold, *Croke Car.* 106, 149. *Audly* and *Halſey*.

This

This Caſe is well reported by Mr. *Juſtice Jones*, *Rep.* 202. Tho' the words of the Statute are, That the Commiſſioners have Power to ſell the Goods which were his at the time that he became a Bankrupt, and altho' he becomes a Bankrupt before the *Liberate*; and altho' the Property remains in the Conuſor, until the delivery by the *Liberate*; yet the Extent had bound the Goods ſo, that when the *Liberate* comes it defeats this, and deveſts the property of the Goods out of the Conuſor, as to any mean Action or Incumbrance from the time of the Extent.

The Goods extended before he becomes a Bankrupt, and delivered by the *Liberate* after he became Bankrupt, cannot be ſold, 2 *Siderfin.* 115. they are in *Cuſtodia Legis.*

Execution was ſued by *Ca. Sa.* the Mony levied, and in the Sheriffs hands, and the man became a Bankrupt *Per Curiam*; the Mony recovered in the Sheriffs hands was not aſſignable by the Commiſſioners to the Creditors; for it was *quaſi in Cuſtodia Legis.* The Caſe was thus, B. and his Wife brought an Action on the Caſe, for words ſpoken of the Wife; upon not guilty pleaded, and Verdict for the Plaintiff, and 5 *l.* Damages aſſeſſed, and 7 *l.* Coſts, they ſue Execution; and after the Mony was levied by the Sheriff, and before the return of the Writ the

Plaintiff became a Bankrupt; and by the Commiſſioners of Bankrupts, the ſaid 12 *l.* ſo recovered, was aſſigned by the Name of the Money of B. to *Blackwell* and other Creditors: The Sheriff brings the Money into Court; the Plaintiff who recovered, prayed to have the Mony delivered to him out of Court; and the ſaid *Blackwell* and the Creditors pray that the Mony may be delivered to them, according to the Sale and Aſſignment of the Commiſſioners: *Per Curiam*, the Mony in the Sheriffs hand was not aſſignable, tho' by the Judgment the Damages and Coſts were aſcertained and turned *in Rem Judicatam*; for it cannot be ſaid to be the Bankrupts Mony, until it be paid to him; and in the mean time it is in the hands of the Sheriff, and in *Cuſtodia Legis*: And this Caſe is the ſtronger, becauſe it is upon a *Ca. Sa.* and the Mony paid to the Sheriff to ſatisfie the Enecution; and none may give a Diſcharge thereof, but the Plaintiff who is party to the Record, and the Aſſignees are Strangers to the Record; and as they cannot have the benefit thereof, ſo they cannot acknowledge ſatisfaction, *Croke Car.* 166, 176. *Benſon* and *Flower*, and *Jones*, 215.

M. recovered againſt E. one hundred pounds; the Sheriffs Bayliff takes the Goods upon *Fi. Fa. Teſte* 4 *Junii.* 6 *June* He whoſe Goods they were, becomes a Bank-

Bankrupt. Commiſſion of Bankrupcy was taken out the 8*th* of *June*, the *Fi. Fa.* was made the 11*th* of *June*, and executed on the Goods the 17*th* of *June*. The Plaintiff, as Aſſignee of the Commiſſioners, brings *Trover* : *Per Cur.* for the Defendant upon Special Verdict, and that the Goods were liable from the time of the *Teſte* of the *Fi. Fa.* and this ſhall be ſaid *Emanatio Brevis*; and the Sheriff cannot divine when a Commiſſion will be taken out, 2 *Keb.* 33. *Bayly* and *Bunning*, *Siderfin. p.* 271. *Meſme Caſe. Per Siderfin*, the Goods are liable to Execution from the time of the *Teſte* of the *Fi. Fa.* and the practice is, that the Bayliff is found guilty, if the party were then a Bankrupt; *per Keb.* in this Caſe, the Court agreed a right in the Creditors by the Act of Bankrupcy, and thereby the Goods are bound, tho' the Creditors have no Action till Aſſignment, *Vide Stat.* of Frauds and Perjuries, that the property of the Goods ſhall be bound only from the time that ſuch Writ ſhall be delivered to the Sheriff.

From what time the Goods liable to Execution.

Stat. of Frauds and Perjuries.

A man brought an Action of Debt on a Bond, and had a Verdict, and before the day in Bank became a Bankrupt; it was moved, that the Debt was aſſigned over, and prayed to have the Mony brought into the Court, which the Court refuſed, and adjudged, that Judgment could not be ſtaied, the Aſſignee of the Bank-

Bankrupt being a Stranger, *in Com. B. Mod. Rep.* cited in *Moncks* Caſe, *p.* 93, and in 3 *Keb. p.* 1.

On motion for G. Aſſignee of Commiſſioners to ſtop having Mony out of Court, the Plaintiff being a Bankrupt ſince the Judgment; but the Judgment being affirmed before the day of the Commiſſion ſued out, the Mony was ordered to be delivered to the Plaintiff, no execution being ſued out, unleſs a Special *Sci. Fac.* and *per Twiſden*, How can we take notice that he is a Bankrupt? Any execution may be ſtopped at that rate, by alledging, that there is a Commiſſion of Bankrupts out againſt the Plaintiff. If he be a Bankrupt you muſt take out a Special *Sci. Fac.* and try the matter, whether he be a Bankrupt or not, which the Court granted; he may bring a Special *Sci. Fac.* as Aſſignee, or *Det* on the Judgment, 3 *Keb. p.* 1. *Mod. Rep.* 93.

Scire Fac.

Suppoſe after Judgment, and before Execution, one becomes a Bankrupt, and the Creditors aſſign this; and after the Judgment is reverſed, *quære* who ſhall make Reſtitution? I conceive the Creditors are not compellable, not being Parties to the Record.

Reſtitution.

In the Caſe in *Dier* 67. *Stringfellows* Caſe, Tho' the Goods were extended, yet they were not delivered to the Conuſee, and the Writ was not returned; and the Writ of Priviledge was for Debt due

due to the King, wherein the King hath his Prerogative by the Common Law; and ſo it differs from *Audly* and *Halſeys* Caſe, *Croke Car.* 148.

The Statute is where an Execution or Extent is ſerved or executed: *Per Cur.* this is accounted the executing of an Extent, when the Goods be appriſed, and the Writ returned, *Croke Car.* 150. *Audly* and *Halſey*, *Vide Stat.* Frauds and Perjuries. So by theſe Caſes, this *Vexata Quæſtio* is well ſetled.

If the Bankrupt convey his Goods, Leaſes, Chattels to any of his Children or other Perſon, ſuch Leaſes, Goods and Chattels ſhall be ſold by ſuch Commiſſioners, except in two Caſes. Leaſes and Goods conveyed by the Bankrupt.

1. What ſhall be conveyed to any of his Children upon Marriage. Or,

2. Upon ſome Valuable Conſideration.

The Statute 21 *Jac.* Provides, that Goods Attached by Foreign Attachment ſhall be ſold by Commiſſioners, which proves, that after the Statute 13 *Eliz.* until the Statute 21 *Jac.* the Commiſſioners had no power to meddle with Goods taken upon a Foreign Attachment, yet they are but a pledge to draw the party to anſwer; and if he appear, the Foreign Attachment is diſcharged. And therefore before the Statute 21 *Jac.* If Goods were attached by Foreign Attachment in *London*, and before Recovery Foreign Attachment.

very, the party becomes a Bankrupt, and after Recovery is had, this ſhould avoid the Sale by the Commiſſioners; therefore to remedy that, the Special Proviſo is added in *Stat.* 21 *Jac.* that in this Caſe the Goods ſhall be in the poſſeſſion of the Vendee as the Goods of the Bankrupt, unleſs the Goods were ſeiſed by the Sheriff before the Party became a Bankrupt, tho' they were ſeiſed before the *Teſte* of the Commiſſion, yet the Goods are bound by the Bankrupcy, 3 *Keb.* 480. *Bingly* and *Warcup.*

Seiſure *per* Sheriff.

As to Goods Extended after ſuch time as he ſhall become a Bankrupt, by ſuch as pretend to be Accountants, or indebted to the King, the Statute directs the Commiſſioners *to examin upon Oath, whether the ſaid Debt were due to the Accountant upon any Bargain or Contract originally made between the Accountant and the Bankrupt, and his and their Servants: And if it appear the ſaid Contract was originally made with any other perſon than the Accountant, or for the uſe and truſt of any other perſon, then the Commiſſioners ſhall Sell ſuch Goods, and their Aſſignee ſhall have good Remedy to recover the ſame: So that if it appear the Original Contract (before he became a Bankrupt) was made between the Accountant and Bankrupt,* bona fide, *the Extent ſhall be good, and the Eſtate ſhall not be ſold by the Commiſſioners.*

Of Goods Extended on pretence of Account to the King.

As

As for what Remedy the Aſſignee ſhall have againſt thoſe that ſhall detain ſuch Goods, it may be by *Trover*, &c. the ſame as the Bankrupt might have had, *Vide infra.*

Truſt.

Of other mens Goods, of which the Bankrupt is in poſſeſſion, and reputed Owner: Or Bonds take in his name.

THO' the Bankrupt (before he is a Bankrupt) convey his Goods to other men upon good Conſideration, yet if he keep the ſame, and is reputed Owner thereof, and diſpoſeth of the ſame as his own, ſuch Goods ſhall be ſold by the Commiſſioners, and accordingly hath it been reſolved: If one ſhall to the intent to ſupport the Credit of a Bankrupt, ſuffer him to have his Goods in his Cuſtody, and to diſpoſe of them; this ſhall be accounted the Goods of the Bankrupt, and not of the Owner, *Stiles Regiſter*, 48, 49.

Bond in the Bankrupts name.

In Debt on Bond the Defendant pleaded, that the Obligation was made to the Plaintiff, to the uſe of him and other Creditors of O. and that one of the others releaſt; it is an ill Plea, he being a Stranger, and the matter but Equity, 2 *Keb.* 333. *Ward* and *Offley*.

Bonds.

Bonds.

R. indebted to S. and B. jointly; S. becomes a Bankrupt, and the Commissioners assign this Obligation to B. the Assignee must have the same Remedy as the Bankrupt had; therefore this or none, 1 *Keb.* 167. *Bolston* and *Ratcliff*.

Bond Assigned. If J. be obliged to J. S. and he before Bankrupcy assign the Bond, this is liable to the after-bankrupcy of J. S. being only suable in his name, 2 *Keb.* 331. *Backwell* and *Littcott*.

One becomes indebted to a Bankrupt, and he and the Bankrupt became bound for this Mony to L. in Trust for the Bankrupt; a Commission issues, and this Debt is assigned to the Creditor, and good; the Bond being to his use, *Vide plus infra*, *Gerard* and *Aylmores* Case.

Of Goods Pawned.

IF the Bankrupt have conveyed away his Goods upon Redemption, then the Commissioners may assign some person to tender or pay the Mony at the day; and after such tender or payment shall sell the same.

Disso-

Diſpoſition of Rent.

A Rent-ſeck, tho' there have been no ſeiſure, ſhall be ſold; Commiſſioners ſell a Rent or Reverſion, it may be good without Attornment; it veſts by the Statute.

A. makes a Gift in Tail, rendring Rent to him and his Heirs, and dies, the Rent is Arear. B. Diſſeiſor enters and levies a Fine, and five years paſs; the Heir of A. is a Bankrupt, who was to receive the Rent: Now this Rent, and the Arrears may be ſold by the Commiſſioners. *Vide infra.*

CHAP.

CHAP. X.

Of the Diſpoſition and Aſſignment of the Bankrupts Debts; and what Aſſignment made by the Commiſſioners ſhall be good, and what not.

PER *Stat.* 13 *Eliz. c.* 7. The Commiſſioners are Impowred to Sell and Aſſign Debts due to the Bankrupt. And,

Per 1 *Jac. c.* 15. If the Bankrupt tranſfer his Debts in other Mens Names, they ſhall by the Commiſſioners be diſpoſed of in as ample manner as if the Debts were in his own Name.

As to Mony Recoverd, *Vide prius.*

The words of the Statute of 1 *Jac.* c. 15. that fully enable the Commiſſioners to diſpoſe of the Bankrupts Debts, are; *Be it Enacted by the Authority aforeſaid, That the Commiſſioners of Bankrupts ſhall have Power to Grant and Aſſign, or otherwiſe to Order and Diſpoſe all, or any of the Debts due to, and for the benefit of the ſaid Bankrupt, by what perſon or perſons ſoever, or in what manner and form ſoever, to the uſe of the Creditors of the ſaid Bankrupt,* &c. *and that the ſame Grant, Aſſignment, or Diſpoſition of the ſaid Debts, in form afore-*

aforeſaid, to be made by the ſaid Commiſſioners, ſhall ſo veſt the Property, Right and Intereſt of the ſaid Debt and Debts in the perſon or perſons of him, her or them, to whom it ſhall be Granted, Aſſigned or Ordered by the ſaid Commiſſioners or the major part of them, as fully to all intents and purpoſes, as if the ſaid Bill, Bond, Bonds, Statutes, Recogniſances, Judgments or Contract, whereupon the ſaid Debt or Debts ſhall ariſe or grow, had been made to, or with, or for the ſaid perſon or perſons, to whom the ſame ſhall be ſo Granted, Aſſigned or Diſpoſed by the ſaid Commiſſioners; and that after ſuch Grant, Aſſignment or Diſpoſition made of the ſaid Debts, that neither the Bankrupt, nor any other to whom any ſuch Debt ſhall be due, ſhall have power to Recover the ſame, nor to make any Releaſe or Diſcharge thereof; neither ſhall the ſame be Attached as the Debt of the Bankrupt, or ſuch ſaid other perſon or perſons, according to the Cuſtom of the City of London, *or otherwiſe; but that the Aſſignees ſhall have like power to recover the ſame, as fully and lawfully in the Name or Names of the perſon or perſons to whom the ſame ſhall be ſo Granted, &c. by the Commiſſioners in all reſpects, as the Party might have had, any Law, Statute, Cuſtom, &c. to the contrary notwithſtanding.*

Foreign Attachment.

There is a Right in the Creditors by the Act of Bankrupcy, and thereby the Goods are bound, tho' the Creditors have no Action till Aſſignment, 2 *Keb.* 33. *Bayly* and *Bunning*, *Siderfin*, *p.* 271.

Dividing a Debt.

If a Bankrupt be indebted to one 20 *l.* and to another 10 *l.* and he hath a Debt due to him by Bond of 20 *l.* now the Commiſſioners may Aſſign and Divide this (*viz.*) to every Creditor a portion, part and part-like; and it ſeems in this Caſe the Aſſignees may ſue ſeverally for it, *Godb.* 195. See *Bradſhawes* Caſe.

Obligee before Bankrupcy aſſigns the Bond.

J. S. is obliged to J. B. and he before Bankrupcy aſſigns the Bond, this is liable to the after-bankrupcy of J. S. being only ſuable in his Name, 2 *Keb.* 331. *Backwells* Caſe.

Where the Commiſſioners have power of the Mony only, on the Sale of Goods.

If the Goods of the Bankrupt come to the hands of A. and be ſold to B. the Commiſſioners have power only of the Mony; but on Sale to A. by the Bankrupt, the Commiſſioners may elect to have Mony or Goods, 2 *Keb.* 348. *Micons* Caſe.

Obligation aſſigned before day of payment.

If an Obligation before day of Payment be aſſigned by Commiſſioners of Bankrupts to a Creditor, altho' the Obligation after becomes forfeit, the Bankrupt ſhall never after take advantage by this; for all is become a Debt to the Creditor, *Siderfin*, *p.* 327. in the Caſe of *Robbins* and *Standard*; and this diſpoſition made by the Commiſſioners ſaves the

the forfeiture of the Obligation, 2 *Keb.* 202.

If a Bond be taken in the Name of another to the uſe of the Bankrupt, the Commiſſioners may aſſign that, *Noy*, 142. Bond taken in ones Name to the uſe of the Bankrupt, may be ſold.

In Debt the Plaintiff ſhews the Statute of 13 *Eliz.* and 21 *Jac. c.* 5. of Bankrupts, and ſhews how E. C. 10 *Jac.* became a Bankrupt, and then was indebted to the Plaintiff, and that in 22 *Jac.* the Defendant becomes bound to one L. in a certain ſum, which he avers was to the uſe of E. C. aforeſaid; and upon Special Pleadings the Caſe was this. One becomes indebted to a Bankrupt, and he and the Bankrupt became bound for this Mony to L. in truſt for the Bankrupt; a Commiſſion of Bankrupcy iſſues, and this Debt is aſſigned to the Creditor, and the Obligee dies, and his Executor releaſeth the Debt, and the Creditor brought an Action of Debt, *Per Cur.* it lies: For the Intereſt of the Debt is transferred to the Creditor *per Stat.* 21 *Jac.* the Bond being to his uſe, and for this the Releaſe is no Bar: So it makes nothing that the Bankrupt himſelf was bound, for the Bond was in truſt for him, and Judgment accordant, *Palmers Rep.* 505. *Gerrard* and *Aylmer*. Bankrupt and his Debtor bound to L. in truſt for the Bankrupt, Executor of L. releaſeth; yet this Debt aſſignable.

A Man recovers Damages in an Action on the Caſe for words, and becomes a Bankrupt, *per Cur.* after Judgment when this is reduced to a Certainty, it Damages.

may be aſſigned: But the Caſe went further. The Plaintiff takes Execution for the Damages, and the Sheriff received the Mony of the Defendant; it cannot be aſſigned ſo long as it lies in the Sheriffs hands, not till he receive it, *Jones Rep.* 215. *Benſon* and *Flower*, *Vide* this Caſe *devant.*

Debt on Simple Contract.

Aſſignees Remedy for Debts of the Bankrupt.

Debt upon a Simple Contract may be aſſigned over to the Creditor, but the Aſſignee ſhall have no other Remedy than the Debtee himſelf had; and this is by Action of Debt, or Action on the Caſe. For if the Debtor become Bankrupt, and die, the Aſſignee ſhall not have an Action of Debt againſt the Executor, but he may have an Action on the Caſe. The Statute doth not alter the Courſe of the Law for Recovery of this in other nature, than the Law before allowed, and doth not give more advantage to the Aſſignee than the Principal Creditor had, *p.* 6. *Car.* 1. *Morgan* and *Green.*

There is a Proviſo in 1 *Jac. c.* 15. That no Debtor of the Bankrupt ſhall be thereby endangered for the payment of his Debt truly, and *Bona Fide*, to any ſuch Bankrupt, before ſuch time as he ſhall underſtand and know that he is become a Bankrupt.

Of Payment before notice, or Commiſſion ſued.

Per Hales & Tot. Curiam, Payment by a Debtor of a Bankrupt to himſelf or to his Creditor before notice of the Bankrupcy, and before the Commiſſion

miſſion ſued forth, is a diſcharge againſt the Commiſſioners or their Aſſignee. *Quære* of the payment after the *Teſte* of the Commiſſion, and before notice, 3 *Keb.* 190. *Grove* and *Smith.*

A Debt aſſigned before a Commiſſion ſued out, was ruled good, in *Yardly* and *Knights* Caſe.

Payment to a Bankrupt after notice is void; but if there is no notice, or if the Party be compelled to pay the Suit before any Commiſſion ſued out, it's a good diſcharge. Anciently, till Commiſſion ſued out, the Debtor ought not to repay tho' he had notice of Bankrupcy, *M.* 25. *Car.* 2. *B. R Prin* and *Beal*; and *Stooer* and *Haſtings* Caſe, 3 *Keb.* 298. payment before a Commiſſion ſued out is good enough, *Andrews* and *Spicers* Caſe.

What Goods, or other Eſtate of the Bankrupt may be ſold and aſſigned by them, Vide ſupra.

THE Commiſſioners may aſſign Debts in Truſt, *Noy* 142. *Calckmans* Caſe, *Vide ſupra.*

The Commiſſioners here may ſell a Bankrupts Goods in *Ireland*, and Iriſhmen may ſue the Commiſſion. *Ireland.*

They may aſſign a Judgment, 2 *Keb.* 706, *Eclor* and *Jacobſon.*

Leaſes diſpoſed by the Commiſſioners.

Proviſo not to ſell.

IT is made a *Quære* in Mr. *Stone*, if a Leaſe for years is made with a proviſo, he ſhall not alien, and the Commiſſioners ſell; whether this be a forfeiture? I hold it is not; for the Act of Parliament which empowers them to ſell to pay Debts, ſhall not be controled by ſuch an inofficious proviſo.

A Leaſe for years is deviſed to A. if he live ſo long, the Remainder to one B. the Commiſſioners ſhall not ſell the poſſibility, *Vide ſupra.*

Advowſons, Preſentations.

A Bankrupt hath an Advowſon, and the Church becomes void, the Commiſſioners ſell the Advowſon, the Vendee preſents, the ſale is good, but the preſentation not; yet I think it is not Symony.

Symony.

One grants an Advowſon to a Feme Covert, ſole Merchant, the Church becomes void; the Husband in conſideration that J. S. enters into Bond to Preach twice a Week, preſents him to the Benefice: The Feme becomes a Bankrupt, the

the Husband dies, the Feme waves the the Grant, the Commiſſioners within ſix Months ſell the Preſentation and the Advowſon, this is a good Sale of the Advowſon, but the King ſhall preſent.

Common.

A. Had Common for a Cow in Paſture to him and his Wife, and to the Heirs of their two Bodies begotten; A. the Husband grants the Common to E. the Wife dies without Iſſue, E. is a Bankrupt; this is neither Land, Tenemnet nor Hereditament which may be ſold by the Commiſſioners, *Stowe p.* 123.

Rents, Vide ſupra.

Herriots, Reliefs.

LORD and Tenant; the Lord is a Bankrupt, the Tenant dies, the Commiſſioners ſhall ſell the Mony or Debt due for the Relief: So of an Harriot: So of the amerciaments of a Leet.

What Aſſignment by the Commſſioners ſhall be good, and what not.

THE Commiſſioners may aſſign Mony to one, and Corn to another of the Creditors, 2 *Bulſt.* 26. But,

They may not make an Aſſignment to many Creditors together for their Debts, but it muſt be ſeverally, to every one a-part, or it is not good, *Godb.* 195, 196. the Commiſſioners may aſſign a Debt due to the Bankrupt to one of his Creditors for the payment of his Debt, but may not divide it and aſſign it more than one. *Ibid.*

But the conſtant courſe and practice is to make an Aſſignment to one or more Creditors in Truſt for themſelves and the other Creditors.

One Joint-obligee becomes a Bankrupt.

R. is indebted to S. and B. jointly; S. becomes a Bankrupt, and the Commiſſioners aſſign this Obligation to B. 1 *Keb.* 167. *Boylſtons* Caſe.

The Aſſignment is a ſufficient bar againſt the Parties, tho' it appear not what was proportionable, 1 *Keb.* 491.

The Plaintiff in *Audita Querela* counted that Sir H. B. to whom he was indebted, became a Bankrupt, and that certain Creditors had his Debt aſſigned to them; and that one of them accepted part of his Debt in ſatisfaction of the whole.

One of Creditors Aſſignees accepted a part of his Debt.

whole. The Defendant demurs, becauſe he had not ſhewed what were the Debts of the Creditors, that ſo his payment might appear proportionable to the Debts; but *per Cur.* it's well enough, eſpecially being an Action brought by one that is a Debtor; and the very Aſſignment is a ſufficient bar againſt the Parties; and if there be any Surpluſage, the Defendant hath remedy in Chancery, 1 *Keb.* 491. *Fitzwilliams* againſt *Lewis.* Surpluſage.

If the Plaintiff had been indebted in as great a ſum as the Bankrupt had been indebted to him, and yet his Debt aſſigned, this Aſſignment had not been good; but this Debt was here aſſigned *inter alia*, and ſo other Debts to be intended; and this may be good. The Defendant here ought to have demanded *Oyer* of the Indenture, and of the Schedule to the ſame annexed, in which the ſeveral Debts are contained. If there be more in this than his proper Debt, then the Aſſignment is not good; but the ſame being here with an (*inter alia*) this is good and ſufficient, 2 *Bulſt.* 26. *Powell verſ. Stuff* and *Timewell.* *Uncore, vide Stiles, &c.*

Decla-

Declaration.

IN an Action on the Caſe, the Plaintiff Declares, That the Defendant was indebted to one *Gode* in the Sum of 43 *l.* 1 *s.* for, *&c.* And being ſo indebted, promiſed to pay him; which *Gode* was indebted to the Plaintiff, and became Bankrupt; whereupon a Commiſſion was ſued out, and the Commiſſioners aſſign **debita p̄d Gode in quadam Schedula contined p̄d ſummam** 43 *l.* 1 *s.* to the Plaintiff, *&c.* Defendant pleads he made no ſuch Promiſe to *Gode.* And by Special Verdict it was found that the Defendant was indebted to *Gode* but in 41 *l.* 1 *s.* which he promiſed to pay; and that the Commiſſioners aſſigned **debita p̄d Gode mencōnat' in quadam Schedula contined p̄d ſummam** 43 *l.* 1 *s.* to the Plaintiff: And if this be the ſame Promiſe that the Plaintiff hath declared upon, they find for the Plaintiff. It was ſaid, that upon the whole Record it appears, that the Plaintiff hath not made a good Title to his Action, for he hath alledged the Aſſignment to be of a Debt of 43 *l.* 1 *s.* whereas the Debt was but 41 *l.* 1 *s.* And this being an entire thing, will not paſs by the Aſſignment of a greater Sum: But it was reſolved,

A different ſum aſſigned.

1. That

1. That it was the ſame Promiſe; for if *Gode* himſelf had brought the Action, he ſhould have recovered upon this Verdict, and the Aſſignment by the Commiſſioners veſts the Debt in the Plaintiff, and he hath the ſame Remedy to recover that the Brankrupt had. And,

2. The Aſſignment is not in queſtion, and that which they found touching the Aſſignment is not material; however the Aſſignment is not laid to be of ſuch a Sum, as by that name, for then the Court inclined to believe it would not have been good, *Allen Rep. p.* 28. *Baker* and *Edmonds.*

The Commiſſioners of Bankrupts have power to Sell, Grant and Aſſign, but they cannot bring an Action; their Aſſignees muſt bring all Actions, *Mod. Rep. p.* 30. But *per Twiſden*, Commiſſioners of Bankrupts might have an Action of Trover, if they did actually ſeiſe any Goods of the Bankrupt, as they might by Law.

It is dangerous for Commiſſioners of Bankrupts to Aſſign Debts particularly; as in *Baker* and *Edmonds* Caſe.

One that is a Bankrupt is *felo de ſe.* Mr. *Stone* puts the Queſtion, whether the Commiſſioners may aſſign the Goods to be ſold for the Creditors, or whether the King ſhall have them? And reſolved it for the Creditors. For, ſaith he, very well; tho' it is reſolved in the Lady

Whether the King ſhall be preferred before a Subject.

Lady *Hales* Caſe in *Plowden*, that when two Titles come together (*viz.*) the Kings and a Subject, the Kings title ſhall be preferred; yet the King by theſe Acts hath given away his Title to the Creditors. And yet in my Opinion this may admit a Diſpute; the Judges never conſtruing an Act of Parliament to give away the Kings Right, but wherein he is mentioned; and ſo is the Opinion in *Jones Rep.* 203. as to this Statute.

The like Caſe is, A Bankrupt hath a Term, and is a Recuſant convict, Whether the King or the Creditors ſhall have the Term?

So; Whether the Creditors by the Commiſſion, ſhall have the Goods of an outlaw'd perſon, or the King.

A Debt for an Amerciament in a Leet.

A pain of 10 *l.* is laid upon a *Reſiant* to reform a publick Nuſance made by him before ſuch a day, and at next Court he is preſented: The Lord becomes a Bankrupt, the Commiſſioners ſell all the Debts of the Bankrupt to A. A. ſhall have Action of Debt for this Amerciament, *Stone p.* 149.

A. ſues an Execution of a Statute Merchant, and the Coniſors Land is Extended at too high a rate, and refuſed by the Extendor, and delivered to the Jurors, B. defeats the Execution by extending an elder Statute. A. is a Bankrupt, the Commiſſioners ſell all his Debts, the elder Statute is ſatisfied, and the Jurors will not enter, the

the Vendee ſhall have a *Sci. Fa.* againſt the Tenant by the elder Statute, and the Terrtenants, and the Jurors to revive the former Execution, *Stone p.* 149.

Sci. Fa. to revive a former Execution by Vendee.

Two Tenants in Common recover Damages in Treſpaſs; the one dies, the other is a Bankrupt; all the Damages ſhall be ſold by the Commiſſioners.

Damages.

A Bankrupt recovers Damages by an erroneous Judgment, the Commiſſioners aſſign them to the Creditors, who recover them in Execution; the Judgment is Reverſed; the ſale is good, but the Aſſignees ſhall make reſtitution, *Vide* 3 *Keble.*

Damages Aſſigned, and then the Judgment reverſed.

CHAP.

CHAP. XI.

Of Actions brought by the Aſſignee: Of the Commiſſioners for the Recovery of Debts, or Goods of the Bankrupt: Of Declarations thereupon: Of Actions brought by the Bankrupt himſelf; and the Forms of Declarations at large.

DEBTS were aſſigned by the Commiſſioners to the Creditors, and they ſued Actions in their own Names for the Debts, and good, 2 *Croke* 105. *Bradſhaws* Caſe.

They ſhall have the ſame Redemedy as the Bankrupt himſelf might have had, 1 *Keb.* 167. The Statute doth not alter the Courſe of the Law for Recovery of this in another nature than the Law before allowed, and doth not give more advantage to the Aſſignee, than the Principal Creditors had, *Paſch.* 6. *Car.* 1. *Morgan* and *Green.*

Action on the Caſe, for an Eſcape of a Committe of the Commiſſioners of Bankrupts againſt the Sheriff of *Briſtol.* The Commiſſioners put him into Goal for refuſing to anſwer Interrogatories, *Vide ſupra*, Cap. 5.

The

Aſſignee ſhall have Debt on a Bond: Trover, Det *on Contract*; Indeb. Aſſumpſit: *Action on the Caſe,* &c. *and other Remedies as the Bankrupt might have.*

ASſignee ſhall have *Trover.* If the Goods of the Bankrupt come to the hands of A. and be ſold by B. no *Trover* lieth for the Mony or Goods, but the Commiſſioners have only power of the Mony. But on the Sale to A. by the Bankrupt, the Commiſſioners may elect to have Mony or Goods, 2 *Keb.* 348. *Micons* Caſe.

Trover. Commiſſioners power of the Mony, and not Goods ſold.

Trover lies of Converſion between the Bankrupcy and Aſſignment: It was held no *Trover* lay, but on ſpecially ſhewing the Bailment before and Converſion Mean; yet it hath been held to lie generally, 3 *Keb.* 294. *Wellempton* and *Danby.*

In Debt by an Aſſignee of Commiſſioners of Bankrupts, the Defendant waged his Law *Inſtanter,* the Debt being on ſingle Contract between the Defendant, and E. the Bankrupt, 2 *Keb.* 360. *Puckridge* and *Brown*; *Siderfin, p.* 372. *Meſme* Caſe, 3 *Keb.* 337.

Wager of Law.

An Action on the Caſe on *Indebitatus, Aſſumpſit* to pay Debt aſſigned by the Commiſſioners of Bankrupts, 3 *Keb.* 625. *Coply* and *Dockmanque.*

In

In Aſſignment of Debts by the Commiſſioners, there is nothing but a naked thing in Action transferred, and no Eſtate or Reverſion to which it may be annexed, and therefore Privity of Contract muſt be transferred, or otherwiſe nothing ſhall be transferred: But if a man ſeiſed in Fee, makes a Leaſe for years, reſerving Rent, and after he becomes a Bankrupt, and the Commiſſioners of Bankrupts aſſign over the Reverſion and the Rent, there the Aſſignee ſhall have an Action of Debt upon the Privity of the Eſtate, and not upon Privity of the Contract, 1 *Sanders* 240. *Thursby* and *Platt*.

What kind of Privity is transferred.

Rent.

Action of *Trover* lieth by the Aſſignee of one Partner a Bankrupt, againſt the other, 2 *Keb.* 750. *Thomas* and *Day*.

Of Actions brought by the Bankrupt himſelf.

IN Treſpaſs by a Bankrupt againſt a Stranger, he cannot plead the Plaintiff hath done ſuch an Act to make him a Bankrup, 2 *Keb.* 32.

The Plaintiff may have Treſpaſs or Covenant, *&c.* where the Damages are uncertain, but any Debt certain is aſſignable.

Debt certain.

Indebitatus by the Plaintiff, being a Bankrupt, the Defendant prayed to be diſcharged on Common Bail, in regard the Debts are aſſigned, and ſo the Commiſſioners

miſſioners muſt bring the Action; and this Aſſignment may be given in Evidence; the Court diſcharged him upon reaſonable Bail (*viz.* of 100 *l.*) the Debt being 1500 *l.* 1 *Keb.* 372. *Holt* and *Scaſgrogy.*

Of Declarations by Aſſignees of Commiſſioners of Bankrupt.

NO place of Aſſignment by Commiſſioners is alledged, *per Curiam* its ill, 3 *Keb.* 345. *Copleys* Caſe. Place of Aſſignment.

In Action of Debt brought upon the Statute of Bankrupts, the Plaintiff laies in his Declaration the Debt due to him, & **quod vigore Statuti p̄dicti Actio accrevit.** *Per Cur.* the Plaintiff ought not in his Declaration to mention his ſeveral Creditors; but this ought to come on the other ſide, to ſet forth that there were no other Goods but thoſe which are named, and there were other Creditors, but the Plaintiff is not to ſet forth this in his Declaration, it being ſufficient for him only to ſet forth his own debt due to him, and that **virtute cuj⁹ Actio accrevit.** Plaintiff need not mention the ſeveral Creditors, but only his own Debt due to him.

It was excepted to the Declaration, that it is uncertain, becauſe it is not expreſt upon what Statute the Action is brought, but *per Curiam* it is good; for theſe words in the Declaration (**vigore Statuti p̄dicti Actio Accrevit**) ſhall be refer- *Vigore Stat' prea'*, how to be referred.

referred unto the Statute which gives the Action unto the Creditor upon the Aſſignment by the Commiſſioners, and this is only the Statute 1 *Jac. c.* 15. Theſe are general Statutes, and therefore notice muſt be taken of them, 2 *Bulſt.* 26. *Powell verſus Stuff* and *Timewell.*

Monſtre del Obligation. *Det* on Obligation aſſigned by the Commiſſioners, and doth not ſhew the Obligation; wherefore it was demurred. *Per Cur.* it's good enough, whithout ſhewing it in Court; becauſe he comes in by Act in Law, and hath no means to obtain the Obligation, *Croke Car. p.* 209. *Gray and Feilder.*

Divers Debts were aſſigned to the Plaintiffs, being Creditors, by the Commiſſioners, upon the Statute 13 *Eliz.* of Bankrupts; and they ſued an Action in their own Names for the Debts. *Per Cur.* it well lies; for it is a Debt transferred by Parliament, and being upon a Contract, the Defendant waged his Law, and was admitted thereto; for tho' the Parliament transferred the Debt, yet it is not any Debt of Record: But as he might have waged his Law againſt the Bankrupt, ſo he may againſt the Plaintiffs, *Croke Jac.* 105. *Vide ſupra* in *Jones Rep.*

Wager of Law, *Vide ſupra.*

The Statute 1 *Jac.* gives an Action to the Aſſignee in his own Name, but he muſt declare ſpecially.

The

The Form of a Declaration by Aſſignees: Of the Commiſſioners of Bankrupts againſt a Debtor.

Lond ſſ. F. B. nuper de W. in Com S. Chapman ſum̃onic fuit ad reſpond̃ P. S. & J. L. de plito quod reddat eis 41 l. quas eis debet & injuſte detinet, &c. Et unde ijdem P & J. p W. T. Attorñ ſuum dicunt q̃d cum p̃d̃ F. — die — Anno, &c. apud Lond in poch, &c. emiſſet de quodam Petro Elſton de Lond̃ Leatherſeller quatuor ſcaplos Papiri Anglice Reams of Piller-Paper, p 20 s. duodecim bundelas fili Anglice White Thred p 20 s (ac ſic diverſas ſeperales pcellas) ſolvend̃ p̃fat Thome Elſton ſcilt cum inde requiſit⁹ fuiſſet; que quidem ſeparales ſumme in toto ſe attingunt ad 47 l. 5 s. 4 d. Cumq; p̃d̃ Petrus Elſton 10 die Julij Anno, &c. indebitat⁹ fuiſſet eid̃ J. L. ac quibuſdam A. B. & J. U. & diverſis alijs pſonis Creditor̃ p̃d̃ Petri Elſton (ipſis J. L. A. B. & J. U. & p̃fat Petro Elſton exiſtent̃ ſubditis natis huj⁹ Reg̃ Angl) in diverſis denarior̃ ſum̃is in toto ſe attingent̃ ad 1000 l. legalis monte Angl ipõq; Petro Elſton ſic indebitat exiſtent̃ ac p̃d̃ 47 l. 5 s. 4 d. p̃fat Petro Elſton p p̃d̃ F. minime ſolut exiſtent̃ idem

Sur emiſſet.

idem Petrus E. postea fecit (tale die & Anno) apud L. in poch & warda pd (eod J. L. & alijs Creditorib⁹ pd Petri E. de debitis suis pd minime satisface existen) incepit Custodire domum suam Anglice did begin to keep his House ibid existen ad intentionem defraudand Creditores suos pd de veris debitis suis p ipsum P. Elston debit. Et superinde eod 10 die Aug. Anno, &c. supdict apud L. in poch & warda pd manifeste devenit decoctor (Anglice) became a Bankrupt qui quidem P. Elston tempore quo ipe sic ut pfertur devenit decoctor Anglice a Bankrupt fuit & adhuc est subdit⁹ nat⁹ huj⁹ Regni Anglie videlt apud Lond pdict in poch & warda pd ac tunc & p multos annos ante tunc in ead poch & warda pd querebat facultatem suam vivendi Anglice did seek his trade of living p viam emendi & vendendi Ac cum postea fecit (tali die & Anno) apud Westm in Com Midd ad peticon pd A. B. J. L. J. D. & aliorum Creditorum pd P. Elston tunc Thome dom Elsmere Dno Cancellario Anglie exhibit & fact p remedijs suis versus pfat P. Elston tunc existen decoctorem (Anglice a Bankrupt) in hac pte hend ijsdem Abr Jacob & Johe & ceteris Creditorib⁹ pd P. Elston de debis suis pd tunc minime satisfact) quedam Commissio dicti Dom Regis

Act del Bankrupcy.

Petition.

Regis super Statuta contra decoctores Anglice Bankrupts edic & pvis sub Magno Sigillo dicc Dom Regis Anglie Sigillat & hic in Cur a plac gerend dat apud Westm pd 16 die, &c. Anno, &c. quibusdam J. S. Ar H. S. Ar J. H. Mercator R. H. Mercator & W. R. Mercator direct fuit p quam quidem Commissionem dicc Dom Rex dedit plenam potestatem & authoritatem pdicc Commissionar quatuor vel tribus eor quorum pd J. S. vel H. S. unum esse voluit jurta separalia Statuta de decoctorib⁹ Anglice Bankrupts in hujusmodi casu edic & pvis in dicta Commissione menconat non solum concern pd decoctorem Anglice Bankrupt corpus pd decoctoris, terras libera tenementa & customar bona debita & alias res qualscunq; sed etiam concern omnes alias plonas que p concelamentum clameum vel aliter offenderet Anglice shall or do offend tangen pd pmissa vel aliquam ptem inde contra intentionem & propositum dictorum Statutorum vel utriusq; eorum ad faciend & exigend scdm dicta Statuta & utrumq; eorum omnes & quaslibet rem & res qualscunq; tam erga & p satisfactione & solucone pdicc Creditorum quam erga & p oib⁹ alijs intentionib⁹ & propositis scdm ordinationem & pvisionem eordem Statutor per quam quidem Commissionem Commission.

idem Dominus Rex voluit & dedit in mandatis qd̄ p̄d̄ Commissionar̄ quatuor vel tres eorum quorum p̄d̄ J. S. & H. S. unum esse voluit ad procedend̄ ad executionem & complementum p̄d̄ Commissionis scd̄m veram intentionem & ꝓpositum dictorum seperalium Statutorum & utriusq; eorum cum omni diligentia & effectu secundum specialem fiduciam dicti Dom̄ Regis in illis repositam; ꝓut p eandem Commissionem plenius liquet & apparet Virtute cujus quidem Commissionis & vigore Statutorum p̄dictorum p̄d̄ H. R. & W. ꝓ meliori remedio Creditorum p̄d̄ post maturam deliberac̄onem inde capt̄ postea scl̄t 5 die, &c. apud London̄ in poch & Warda p̄d̄ ꝑ quandam Indenturam assignac̄onis inter ipsos H. R. & W. ex una pte & eosdem Petrum Jacob & Jacobum ex altera pte factam, cujus alteram partem Sigillis ipsorum H. R. & W. signat̄ ijdem P. J. & J. in Curia ꝓferunt, cujus dat̄ est die & Anno ult̄ supra dict̄ testat̄ existit̄ qd̄ cum placuerit Regie Majestati p Commissionem suam sub Magno Sigillo Anglie Sigillat̄ geren̄ dat̄ 16 die, &c. Anno Regni sui 11 direct̄ p̄d̄ J. S. H. S. J. H. R. H. & W. R. dantem plenam potestatem & authoritatem eis vel aliquibus quatuor aut tribus eorum quorum p̄d̄ J. H. vel H. S. unum esse voluit,

Assignment.

Recital.

voluit, p̄ executione Statutorum tangen̄ ordines p̄ decoct Anglice Bankrupts quorum unum editum fuit in Parliamento inchoat & tene apud Weſtm̄ p̄d̄ 19 die Maij Anno, &c. intitulat Actus p̄ meliori relevio Creditor̄ contra eos qui devenirent decoct Anglice Bankrupts vel aliquem eorum ſup Corpus terras bona debita p̄d̄ P. Elſton qui devenit decoctor̄ ea intentione q̄d̄ tam Creditores p̄d̄ P. Elſton eſſent ratabiliter & p̄portionabiliter ſatisfact de debitis ſuis in tant quant ſtatus p̄d̄ P. Elſton extenderet, quam erga & p̄ omnib⁹ alijs materijs intentionib⁹ & p̄poſitis ſec̄m ordinationes & p̄viſiones dictorum Statutorum & utriuſq; eorum p̄out p̄ p̄d̄ Commiſſionem & Petitionem eidem annex' liquere poteſt p̄d̄ Commiſſionarij p̄ debita execution inde juxta officiorum eorum debitum proceſſerunt in eiſdem ſec̄m equitatem & purpor̄ Anglice purport p̄dictorum Statutorum & Commiſſionis & p̄ eo quod invenerunt p̄ examinationem p̄d̄ P. Elſton & aliorum q̄d̄ circa (tali die & Anno) P. Elſton ſecrete remanebat Anglice did keep himſelf ſecret in Domo ſua in Fryday-ſtreet London & recuſabat colloquium cum Creditorib⁹ ſuis vel ire foras ex p̄poſit ipſum cuſtodire a ſectis & arreſtationib⁹ Creditorum ſuorum ac deferre & impedire eos a recupe-

racone debitor4 suor4 & sic eo modo induxit seipsum Anglice did bring himself infra periculum Anglice within the compass predictorum Statutorum de decoctoribꝰ, & fuit eor tempore possessionatꝰ ut in jure suo ppio de diversis mercimonijs, merchandizis, bonis, utensilibꝰ, & pecuniarum summis, & huit diversa debita tunc ei deven ad magnum valorem, pars quorum quidem mercimoniorum, merchandiz', bonorum, debitorum, & summarum pecunie devenerunt ad manus diversarum personarum, quarum nomina quam etiam particulares parcelle quorum mercium, merchand, bonorum summar pecunie ac debitorum sunt specificat & contenc in schedula indene pd Indenture annex' ijdem Commissionarij p & in consideratione mille librarum currene monete Anglie solvend p eosdem P. J. & J. put in Indentura pdicta postea mentionabat; & ex pte eorumdem P. J. & J. conven p tanto quantum legitime potuerunt, concessissent barganizassent vendidissent & allocassent Anglice set over & p eandem Indenturam barganizaverunt vend' assign & allocaverunt eisdem P. J. & J. & eorum assig omnia & singula pdicta bona mercimon merchandiz' utensilia debita & summas pecunie & quamlibet ptem & pcellam inde que legitime potuissent ven-

Assignment.

vendere, & que devenissent & remanssent in manib⁹ p̄dictarum p̄sonarum quarum nomina contenē fuere in schedula p̄d' p̄dicte Indenture annex' hend' & tenend' omnia p̄dicta bona, mercim̄ merchandiz' deba summas pecunie ac omnia & singula p̄dicc barganizac vendic & assignac p̄missa, ac quamlibet ptem & pcellam inde, eisdem P. J. & J. executorib⁹ administratorib⁹ & assign̄ suis imppetuum. Et ijdem P. J. & J. p seipsis executor̄ administrator̄ & assign̄ suis & p quolibet eorum convenerunt p̄miser̄ concess̄ & agreaver̄ ad & cum p̄fac J. S. Hen' Joh' Harper Rob' & Wolse & ad & cum utroq; & quolibet eor̄ & utriusq; eor̄ executorib⁹ & assign̄ p eandem Indenturam qd̄ ijdem P. J. & J. exeeuc & assign̄ sui & quilibet eor̄ cum omni convenienti celeritate sectarentur Anglice will sue arrestarent implacitarent & utentur eor̄ & cujuslibet eor̄ optimis medijs & ope p leges hujus Regni seu alia legitima media, recuperare capere vel recipere de p̄d̄ personis in p̄d̄ Indentura & Schedula p̄d' eid' Indenture annex' mentonat eorum heredib⁹, executorib⁹, vel aliquo eor̄ p̄dicta bona mercimonia, merchand utensilia deba & summas pecunie vel verum valorem inde & qd̄ P. J. & J. her̄ exec̄ adminis vel assign̄ sui vel aliqui eor̄ ad aliquod temp⁹ post da- Covenant.

tum

tum Indenture p̄d̄ non acquietarent relax' seu exonerar̄ vel caular̄ seu p̄curar̄ fore acquietar̄ relax' vel exonerar̄ p̄dictas p̄sonas in p̄dicta Indent̄ vel indentata Schedula p̄dicte Indenture annex' men̄conar̄ hered̄ adminis̄ vel assign̄ suos vel aliquem eor̄ de & ab p̄d̄ bonis mercim̄ merchand̄ utensil debis veris, summis pecunie, seu de vel ab aliqua p̄te vel p̄cella eorum fet tantummodo tal̄ qual̄ ijdem P. J. & J. essent accomptabil̄ p̄d̄ Commissionar̄ seu trib⁹ eorum ad minus quorum, &c. fore unum. Et ijdem P. J. & J. p seipsis exec̄ adminis̄ & assign̄ suis & p quolibet eor̄ convener̄, concesser̄, &c. q̄d̄ super recuperatione & receptione p̄dictor̄ bonor̄, &c. & summarum pecunie, seu alicujus partis inde, ijdem P. J. & J. exec̄ admin̄ vel assign̄ sui de tempore in tempus infra 10 dies post quamlibet requisitionem eis fiend̄ p p̄dict̄ Commissionarios vel aliquos tres eorum facerent justum & verum computum omnium talium summe & summarum pecunie quas ipsi vel eorum aliqui reciperent p aliquib⁹ p̄dict̄ mercimon̄ vendit̄ vel p debis solut̄ seu p vel super aliqua composic̄one concern̄ eadem, p̄d̄ Commissionarijs vel aliquib⁹ tres eorum vel alicui p̄sone sive p̄sonis quas ipsi in Scriptura nominarent & appunctuarent, existen̄ Cre-

Account.

di-

ditorib⁹ p̄fat P Elston, qui scdm̄ p̄dicta Statuta contribuerent oneri p̄dicte Commissionis: Et sic computantes qd̄ ijdem P. J. & J. seu exec admin̄ vel assign̄ sui vel aliqui eorꝝ immediate super quolibet tali Compuc solverent & deliberarent seu causarent solvi & deliberari p̄dicc Commissionar̄ ut p̄d̄ est in tali modo & forma seu talib⁹ psone vel psonis qual p̄d̄ Commissionar̄ nominarent & appunctarent scdm̄ p̄dicta Statuta vel utrumq; eorum & p̄d̄ Commissionem omnes tales summam & summas pecunie qual ille vel illi reciperent ut p̄d̄ est: Excepc & reservac eisdem P. J. & J. exec & assign̄ suis omni tal rationabil summa & summis monete qual essent disbursac seu expendic ꝓ & erga recuperationem & recepc̄onem p̄d̄ bonorum mercim̄ mercand̄ sum̄e vel summarum pecunie ut supradicc est ꝓut p eandem Indentur̄ inter al plenius apparet. Et ijdem P. J. & J. in facto dic quod p̄d̄ debitum 48 l. 5 s. 4 d. in Schedula p̄dicta inter alia p̄dicte Indenture annex' & inter alia ijsdem P. J. & J. ꝑ Com̄issionar̄ p̄d̄ assign̄ & p̄d̄ debitum 48 l. 5 s. 4 d. superius specificac fore debitum est unum & idem debitum & non aliud neq; diversum & est tam ad usum p̄d̄ P. J. & J. quam ad usum reliquorum Creditorum p̄d̄ P. Elston p quod ac vigore Sta-

Averment.

Statutor̄ p̄d̄ actio accrevit ijsdem P. J. & J. ad exigend̄ & hend̄ de p̄fat̄ Francisco p̄dict̄ 48 l. 5 s. 4 d. p̄dictusq; Franciscus de 7 l. 4 s. 5 d. inde ijsdem P. J. & J. postea satisfecisset p̄dictus tame Fr̄ licet sepius requisitꝫ p̄d̄ 41 l. inde resid̄ eisdem P. J. & J. nondum reddidit sed, &c. Tr. 13 Jac. Rot. 3365.

Det per Assignee of the Commissioners of Bankrupcy, upon a Bond made to the Bankrupt.

W. B. queritur de T. R. de Longlane in pocħ Sancti Sepulchri London̄ nigro pistore alias dict̄ T. R. de ead̄ Civitat̄ nigro pistore in custodia Marr̄, &c. de plito quod reddat ei decem lib̄ legl̄is monete Anglie quas ei debet & injuste detinet pro eo videl̄t qd̄ cum p̄d̄ T. 11 die Febr̄ Anno Regni Dom̄ Caroli nunc Regis Anglie, &c. nono apud Lond̄ p̄d̄ videl̄t in pochia beate Marie de Arcub⁹ in warda de Cheap' London̄ p quoddam scriptum suum obligatorium sigillo ipsius T. sigillat̄ Curieq; dict̄ Dom̄ Regis nunc hic ostens̄ cujus dat̄ est eisdem die & Anno cogn̄ se teneri & firmit̄ obligari cuidam J. B. nuper de London̄ Upholster in decem libris solvend̄ eid̄ J. cum inde requisit⁹ esset.

Cumq;

Cumq; etiam ꝑd J. poſtea ſcit quarto die Martij Anno Regni dicē Dom̄ Caroli nunc Rīs Anglie undecimo apud London ꝑd in poch & warda ꝑd indebitat fuiſſet eid̄ W. & diverſis alijs Creditoribus ipſius J. exiſtēs ſubdit nat huius Regni Anglie in diverſis ſepalib⁹ denariorum ſum̄is in toto ſe attingēs ad duas mille libras legalis monete Anglie ipſoq; J. ſic eid̄ W. & ꝑd alijs Creditorib⁹ ipſius J. indebitat exiſtēs ac ꝑd 10 libris in manibus ipſius T. ut ꝑtur inſolue exiſtēs Idem J. ꝑdicto quarto die Martij anno undecimo ſupradicē apud London ꝑd a Domo ſua manſionali deceſſit (Anglice) did depart ea intentione ad defraudand Creditores ſuos ꝑd de veris & juſtis debitis ſuis eis p ipſum J. debit p quod Creditores ſui impedit fuer Anglice were delayed de obtentione juſtorum & verorum debitorum ſuorum Et ſuperinde ꝑd J. J. cod̄ quarto die M. Anno undecimo ſupradicto apud London ꝑd manifeſte devenit Decoctor (Anglice became a Bankrupt) & fuit & adhuc eſt ſubdit⁹ natus huius Regni Anglie (videlt) apud London ꝑd in paroch & warda ꝑd & adhuc & p multos annos ante tunc querebat modum ſuum vivendi (Anglice) did ſeek his trade of living p viam emendi & vendendi Cumq; etiam poſtea ſcit decimo die Martij anno un-

Act *des* Bankrupcy.

undecimo supradice apud Westm in Com Midd ad petitionem pd W. & quorundam aliorum Creditorum pd J. tam p seipsis quam p alijs Creditorib' ipsius J. honbli viro Tho Dom Coventry adhuc & adtunc dno custod Magni Sigilli dicti Dom Regis nunc Anglie exhibit & fact p remedijs suis versus pfat J. tum existen decoctorem (Anglice a Bankprupt) in hac pte hend eid W. & alijs Creditorib' pd J. de debitis suis pd tunc minime solut sive satisfact existen quedam Comissio Dom Regis super Statut contra decoctores (Anglice Bankrupts) edit & pvis sub Magno Sigillo ipsius nuper Regis Anglie sigillat & hic in Curia plac gerend dat apud Westm pd pd decimo die Martij anno undecimo supradict quibusdam J. G. Ar T. C. Ar A. H. Gen J. W. Gen & H. H. Gen direct fuit p quam quidem Comissionem idem Dom Reg nunc adtunc & ibidem dedit plenam potestatem & authoritatem pd Commissionar quatuor vel trib' eorum quorum pfat J. & T. unum esse voluit juxta seperalia Statuta de decoctorib' Anglice Bankrupts, & quodlibet eorum in hujusmodi casu edit & pvis in dicta Commissione mentionat non solum de & concernen dictum decoctorem Anglice Bankrupt corpus suum terras liberas & custumar bona debita & alia quecunq;

Commission.

cunq; ſed etiam concernen omnes alias plonas que p concelament clameum vel aliter offendiſſent vel offenderent (Anglice do ſhall and offend) concernen pmiſſa vel aliquam ptem inde contra intenc̃onem & ppoſit (Anglice the meaning) eozundem Statutozum vel alicujus eozum, & agere & exequi ſedm pdicta Statuta & eozum alicujus omnes & ſingulas rem & res tam erga & p ſatisfac̃one & ſolutione Creditozum pd̃ quam erga & p omnibus aliis intentionib⁹ & ppoſitis ſedm ozdinationem & pviſionem eozundem Statutozum dictus Dom̃ Rex p eand̃ Coñiſſionem volens & pcipiens eiſdem Commiſſionar̃ quatuoz vel trib⁹ eorundem quozum p̃fat̃ J. G. & T. E. unum eſſe voluit ad pcedend̃ ad execucionem ad accomplementum pd̃ Commiſſionis ſedm̃ veram intentionem & ppoſit (Anglice meaning) eozundem ſeparalium Statutozum & alicuj⁹ eorumdem cum diligentia & effectu put ſpecialis fiducia dicti Dom̃ Regis in eis poſit̃ fuit pzout p eandem Commiſſionem plenius apparet Virtute cujus quidem Coñiſſionis & vigoze Statutozum p̃dict̃ pd̃ J. G. A. H. & T. W. tres Coñiſſionar̃ pd' & pd' J. B. p meliozi remedio pd' W. B. & p alijs bonis cauſis ipſos ad inde ſpecialiter movend̃ poſt maturam deliberationem inde capt̃ ſcit decimo quarto die, &c.

Anno

Assignmct. Anno Regni, &c. p quoddam scriptū suum indentat sigillis eorundem J.G. A.H. & J. W. sigillat ad & cum consensu creditorum pd' J. B. qui Commissionem pd' prsecut fuissent & impetrassent Ac etiam ad & cum assensu pd' J. W. decoctoris & in executione Commissionis illius assignaverunt & extrapositorum (Anglice have set over) eid' W.W. pd' debitum decem librarum inter alia prfat J. B. p prfat T. R. in forma pd' debit hend' tenend' petend' demand' sectand' recuperand' & recipiend' debitum pd' quamlibet ptem & prcellam inde eidem W. executorib' administratorib' & assignd suis tanquam bona sua ppria & ad suum ppr̃ium usum & beneficium imppetuum absq; aliquo Compō p ipsum W. B. executores vel assignd suos alicui plone vel aliquibus plonis quibuscunq; p eisdem fiend' p quod ac vigore Statutorum pd' actio accrevit eid' W. B. ad exigend' & hend' de pdict T. R. pd' decem lib pd' tamen T. licet sepius requisitus &c. pd' 10 l. pfat J. W. nondum solvit sed illi ei hucusq; solvere omnino contradixit & adhuc contradicit ad damnum ipsius W. quinq; librarum Et inde pducit sectam, &c.

CHAP.

CHAP. XII.

Of Pleadings in reſpect of the Statutes of Bankrupcy by the Debtor or by the Commiſſioners to Actions brought againſt them, and what Pleas ſhall be good, and what not.

IN an Action on *Aſſumpſit* for Wares ſold; the Defendant pleads ſuch a day the Plaintiff became a Bankrupt, and yet is ſo; to which the Plaintiff demurred, becauſe he ſaith not he was a Tradeſman, 3 *Keb.* 134. which ſhould be, *Hanſlop* and *Hales*; yet the Plea ſeems to be ill, *Vide* Caſe *ſequent'* and 2 *Keb.* 32.

In Debt on Obligation, the Defendant pleaded, before the Action brought the Plaintiff became a Bankrupt; to which the Plaintiff demurred. *Per Curiam*, it's an ill plea; and until aſſignment be made, the Debtor is defenſleſs: Payment before Commiſſion ſued out is good enough, and ſo it is before his Debt is aſſigned; *quære de hoc.* Judgment *pro Quer'* 3 *Keb.* 616. *Andrews* and *Spicer. Q.*

Plea, that the Plaintiff was Bankrupt before Action brought, ill.

Det on Obligation for performance of Articles for payment of Mony for Rent; Defendant pleads that the Plaintiff was a Bankrupt, and that the Defendant paid

the Mony to the Aſſignees of the Commiſſioners of Bankrupcy, *Tompſons Entrys, Fo.* 166.

Det on Obligation, on *Oyer* the Defendant *proteſtando* that this Debt was not aſſigned by the Commiſſioners of Bankrupcy of *Holt*, for plea ſaith, that this was not due to the Plaintiff, *& alijs Crediroribus* of *Holt*; to which the Plaintiff replied it was ſo due, and the Defendant demurred ſpecially as double. *Twiſden* conceived the Replication ill, and that the Aſſignment to the Plaintiff ſhould be ſhewed, that being traverſable as well as the Bankrupcy: This Caſe ſeems not to be well reported here, therefore let us ſee how it is reported three or four Leaves after. In *Det* on Obligation, Defendant pleads that it was in truſt for *Holt* who is a Bankrupt, *& virtute Commiſſionis quibuſdam* Commiſſioners, *&c.* this Debt was aſſigned to *Aſhly* and *Penning & alijs Creditoribus*, *&c.* to which the Defendant demurred ſpecially for doubleneſs; the Court conceived the Bankrupcy traverſable as well as the Aſſignment, but the Iſſue is well enough, 3 *Keb.* 710, 737. *Jonas* and *Boulton.*

Bankrupcy traverſable as well as the Aſſignment.

Action on the Caſe, *Indebitatus Aſſumpſit* to pay a Debt aſſigned by the Commiſſioners of Bankrupts; the Defendant pleaded the Statute of Limitations, and that *Cauſa Actionis non accrevit infra ſex Annos.* Mr. *Stone* hath made a *Quære* whether

Stat. Limitations.

whether he that comes in as Creditor, and hath a Debt made over unto him by the Commiſſioners, may not be barred by the Statute of Limitations. Mr. *Billinghurſt*, *p.* 129. very roundly anſwers the matter, that he ſhall be barred. But it ſeems this is not within the Statute of Limitations: And certainly the Commiſſion being dated within the ſix years, the plea ſhould have been *infra ſex annos*, after the Commiſſion. Let us diſtinguiſh: If a Commiſſion be not taken out within ſix years (as it may be ſo long and longer except in caſe of Purchaſers, for then it muſt be taken out within the ſpace of five years) then perhaps to this Action, being on Contract, the Defendant may plead the Statute of Limitations; but if Commiſſion be taken out within the ſix years, and Aſſignment made within ſix years, then the Statute ſeems to preſerve this Debt by the Aſſignment, it being to relieve Creditors againſt ſuch baſe Fraud: But to allow this Knaviſh Plea to cover former Knavery of this high Nature, it is intolerable, *Vide in* 3 *Keb.* 625, 645. in *Coply* and *Dockmins* Caſe, an *Anonymous* Caſe cited by *Weſton*, that it was adjudged in C. B. that this Debt is not within the Statute of Limitations.

On Covenant by Aſſignee to account.

In *Det* on Bond given to the Plaintiff to perform Covenants between the Defendant as Aſſignee, for the benefit of

the other Creditors, and the Commiſſioners of Bankrupts, which was, *inter alia*, to give an account to the other Creditors, or to either of their Aſſignees on requeſt: The Plaintiff ſaid he had not given him an account in his Replication; (the Defendant having pleaded performance in bar) to which the Defendant demurred, becauſe the Covenant is joint as to Creditors, to which the Court inclined, there being a ſubſequent Clauſe ſeveral as to Aſſignees, 1 *Keb.* 815. *Selby* and *Walker*: But *per Keeling*, the Covenant is ſeveral, according to the intereſt and ſubject matter, and each of the Creditors may call the party to an account, but the Covenant was by the Defendant and his Brother, which was ſeverally to do their endeavours to bring in the Debts, *& ſuper requiſitio' eis fact'*, they would account; therefore both are bound to account jointly, tho' the Bond is only given by one. Court held it ill, the Plaintiff being no party to the Covenant, *p.* 843. *Meſme* Caſe.

In Treſpaſs by a Bankrupt againſt a Stranger, he cannot plead the Plaintiff hath done ſuch an Act to make him a Bankrupt, 2 *Keb.* 32.

Wager of Law. In Debt by Aſſignee of the Commiſſioners, the Defendant pleads *nil debet*, and wages his Law; and by the Court he may well, tho' the intereſt and power to ſue in his own name be good to the Plain-

Plaintiff by the Statute of Bankrupts: But otherwiſe if the duty it ſelf had been originally due by the Statute, *Noy p.* 112. *Osborn* and *Bradſhaw. Vide ſupra.*

In *Aſſumpſit*, the Defendant pleads that after the Promiſe, and before the Action, the Plaintiff became a Bankrupt, denying himſelf to Creditors, of which the Plaintiff had notice. *Per Cur'* payment to a Bankrupt after notice, is void; but if no notice, or if the party be compelled to pay by Suit, as here before any Commiſſion is ſued out, it's a good diſcharge. Formerly till Commiſſion ſued out, the Debtor ought not to repay tho' he had notice of Bankrupcy, 3 *Keb.* 231. *Prin* and *Beal.*

Payment before notice, or Commiſſion ſued out

Of Pleadings to Actions brought againſt the Commiſſioners.

IN Treſpaſs againſt the Commiſſioners of Bankrupts, if the Plaintiff declares of the entry into his Houſe, the Defendant may not plead not guilty, and give the Special Matter in Evidence; but he ought to plead the Commiſſion of Bankrupcy, and all the Special Matter; but if it had been for taking of Goods only, he may plead not guilty generally, *Litt. Rep.* 356. By the Statute 1 *Jac.* 15. It is Enacted, *That if any Actions of Treſpaſs, or other Suit ſhall happen hereafter to be brought againſt any Commiſſioner authoriſed*

To the breaking the Houſe it muſt be ſpecially pleaded.

Alter, As to taking Goods.

riſed by the Statute made in the 13*th of* Eliz. *for Bankrupts, or any other perſon or perſons having Authority by vertue, or under the Commiſſion, authoriſing the ſaid Commiſſioners for the doing or executing any matter by force of the ſaid Statute, or this preſent Act, that the Defendant or Defendants in any ſuch Action or Suit may plead not guilty, or otherwiſe juſtifie that the Act or thing whereof the Plaintiff or Plaintiffs complained was done by authority of the ſaid Act of* 13 Eliz. *or in this preſent Act reſpectively, without expreſſing or rehearſal of any other matter or circumſtance contained in either of the ſaid Acts, and without enforcing him or them to ſhew forth their Commiſſion authoriſing the ſaid Act or thing, whereunto the Plaintiff ſhall be admitted to reply, that the Defendant did the fact ſuppoſed in the Declaration, of his own wrong, without any ſuch Cauſe alledged by the ſaid Defendant; whereupon the iſſue in ſuch Action ſhall be joined to be tried by twelve men; and upon trial of that Iſſue, the whole matter to be given on both parties in Evidence, according to the very truth of the ſame: And if Verdict upon ſuch Iſſue ſhall paſs for the Defendant, the Defendant to have his Coſts.*

Now the reaſon of the difference ſeems to be, that the Commiſſioners may plead the General Iſſue, or any thing done by the Statute of 13 *Eliz.* and 1 *Jac.* and neither of thoſe Statutes do authoriſe the breaking open Houſes; but that Authority

thority is given by 21 *Jac.* and no ſuch General Pleading is provided for by that Statute.

Action on the Caſe was brought by the Plaintiff for the breaking his Houſe, and taking his Goods away, by pretence of the ſaid Commiſſion; whereas he was no Bankrupt, *per quod* he was impaired in his Credit. Defendant pleads the Plaintiff brought an Action of Treſpaſs for the ſame Treſpaſs againſt him, and that he recovered therein; It is no Plea, *Stiles Rep.* 3. 201, 202. *Watſon* & *Norbery.* Former Action of Treſpaſs no Plea to an Action on the Caſe.

As for the Form of Pleas, *Vide poſtea.*

CHAP. XIII.

Of the Venue, Evidence, Trial.

Of the Venue.

IN Action of *Trover* by Aſſignee of the Commiſſioners, the *Viſne* may be laid in *Middleſex*, whence the Commiſſion iſſueth, or in the place where the Cauſe of Action ariſeth, at the Plaintiffs Election; the Commiſſion being the Foundation of all, *H.* 15. *&* 16. *Car.* 2. *Bayly* and *Bunnings* Caſe.

Evidence, Trial.

Depoſitions. THE Evidence offered, were the Depoſitions before the Commiſſioners of the Bankrupt, which *per Curiam* is good enough; but the Defendants Councel oppoſing them, they proved *viva voce* what the Bankrupt confeſt.

In a Suit in Chancery on Aſſignment of Lands, *&c.* the Depoſitions which were taken before the Commiſſioners, not allowed as Evidence; but a Special Commiſſion taken out: The Defendant excepted to a Witneſs becauſe he was a Witneſs. Creditor, and ſo might come in before divi-

diviſion made: But after four Months after any Dividend duly made, he is a good Witneſs; for no other Dividend ſhall be intended, 2 *Keb.* 348 *Bets* and *Mico.*

What Evidence ſufficient to prove a man Bankrupt, *Vide Siderfin*, 411. Sir *Anthony Batemans* Caſe, *& alias ſupra.*

On Trial at the Bar in *Trover* and *Converſion* for 4000 *l.* which was the Mony of Sir A. C. a Jew, and upon his Bankrupcy, aſſigned by the Commiſſioners of Bankrupts to the Plaintiff, and exception was taken to the Evidence, becauſe the Aſſignment of the Commiſſioners was 18 *No.* 67. and the Plaintiff demands the Mony of the Defendant 21 *No.* 67. and the Declaration is of the ſame Term (*Sil't*) *Mich.* 67. which relates to the firſt day of the Term: And ſo Action brought before Cauſe of Action. But *per Cur.* an Action in *B. R.* ſhall not be ſaid to commence, until the Defendant hath made his appearance, which is not until Bail filed, (if it be by Bill) *Siderfin*, *p.* 373. *Lidcott* and *Backwell.*

Action before Cauſe of Action.

Maxims of Bankrupts.

ONCE a Bankrupt and always a Bankrupt, *per Glyn.* 2 *Siderfin*, 115. *Vide prius.*

Statues favourably to be conſtrued for the Creditors, *Vide le Stat.* 2 *Siderfin.* 115.

He

He that is a Bankrupt to one Creditor, is a Bankrupt to all, *Stiles Reg.* 48.

CHAP. XIV.

Of Diſtribution: Notice to Creditors: Of Dividend, and the Form; as alſo the Form of a Deed of Diſtribution.

Of Diſtribution, Vide prius ſub Titul' *Aſſignment.*

THE Commiſſioners may ſell and prepare for Diſtribution preſently upon the execution of the Commiſſion; but till the four Months are paſt, they may not proceed to Diſtribution, *Hutton, p.* 38.

Per Coke and *VVinch.* 10 *Jac. Reeve verſ. May*, The Commiſſioners may divide a Debt upon Obligation.

Diſtribution muſt be *to every one of the Creditors a portion, rate and rate-like, according to the quantity of his or their Debt*, 2 Rep. 25, 26.

Commiſſioners ought to make ſeveral Diſtribution to ſeveral Creditors, and not to mak a joint-Sale or Aſſignment to ſeveral Creditors: For if he owe to A. 20*l.*

to

to B. 20 *l.* and to C. 5 *l.* a joint Sale or Aſſignment to A. B. and C. is not according to their power given by the ſaid Act 13 *Eliz.* but if by the Special Verdict it appears that the Debt was due to the Plaintiffs jointly, then the joint Sale is good, 2 *Rep.* 26.

If a Bankrupt be indebted to one 20 *l.* and to another 10 *l.* and he hath a Debt due to him by Bond of 20 *l.* Now the Commiſſioners may aſſign and divide this (*viz.*) to every Creditor a portion, part and part-like; and the Aſſignees it ſeems may ſue ſeverally for it, *Godb.* 195. See *Bradſhaws* Caſe.

Per Stat. 21 *Jac.* Judgmentees, Coniſees, Attachers, *per foreign* Aattachment, if there be no Extent ſued and executed upon any the Lands, *&c.* Goods and Chattels of the Bankrupt before the time of his Bankrupcy, ſhall only have a rateable part with other Creditors for their juſt Debts, *Vide Prius* Cap. 5.

If any Diſtribution be made of any part of the Eſtate, no Creditors are to be admitted after, that come not in before, *Hob.* 287. *vide ſupra* Cap. 6. *Fuller* and *Lance* in *Chancery.*

Notice

Notice to Creditors of making a Dividend, upon paying Contribution Mony, and proving their Debts.

WE whoſe Names are ſubſcribed, being the major part of Commiſſioners named and authoriſed in the Commiſſion of Bankrupt awarded againſt A. B. of, *&c.* the Four Months ſince the the date and ſuing forth of the ſaid Commiſſion, having been long ſince elapſed and expired; and the Creditors who proſecute the ſame, having deſired that we ſhould proceed to make a Dividend of the Eſtate by us already diſcovered and aſſigned, as by the Statutes we are impowred, do therefore by theſe Preſents give fourteen days notice thereof, and that we do intend and appoint to meet for making the ſaid Dividend, on *Friday* the firſt day of *September* next enſuing, by Ten of the Clock in the Forenoon of the ſame day, at the *Iriſh* Chamber in in *Guildhall*, *London*; and ſuch Creditors who do intend to come into the ſaid Commiſſion for their reſpective Debts, are to take care to purſue the directions of the ſaid Statutes, in paying in their Contribution-mony, according to our former Order in this Affair, leſt they be excluded the Dividend; and they are alſo at the ſame time and place, to come pre-

prepared to make due proof of their reſpective Debts; dated the 18*th* day of *Auguſt*, in the fifth year of, *&c.*

CHAP. XV.

Of Bankrupts: Where there are Partners, and Joint-ſtocks.

AN Action of *Trover* well lieth by the Aſſignee of one Partner a Bankrupt, againſt the other, *p.* 23. *Car.* 2. *B. R. Thomas* and *Day*, agreed at a Trial.

If there be two Partners, and one breaks, you ſhall not charge the other with the whole, becauſe it is *ex maleficio*: But if there are two Partners, and one of them die, the ſurvivor ſhall be charged for the whole. If he be ſworn before the Commiſſioners of Bankrupts, he is admitted no Partner, *per Twiſden*, *Mod. Rep.* 45.

If one for a time deal in a Trade, and after he forſakes his Trade, but leaves his Stock in the hands of another, and he hath part of the gain, and is partaker of the loſs; if ſuch a one after deſert and conceal himſelf, he is a Bankrupt

rupt within the Statute, *Palmers Rep.* 325. in the Caſe of *Hayler* and *Hall.*

Craven & al' and *Knight*, &c. In Chancery. The Bill ſets forth that the Defendant *George Widdowes* being indebted to the Plaintiffs, became bound to them in ſeveral Bonds; and the ſaid *Widdows*, and the Defendant *Berman* for ſeveral years paſt, were Copartners, and *Widdows* by Articles of Copartnerſhip was intitled to two thirds of the whole Stock, and the Defendant *Berman* to one third part; the ſaid *Widdows* and *Berman* 25 *Auguſt* laſt became Bankrupts, and a Commiſſion of Bankrupcy was awarded again them; the Commiſſioners of Bankrupts aſſigned all the Eſtate of the ſaid Bankrupts to the Defendant *Knight* and others, and refuſe to let the Plaintiffs Creditors of the Bankrupts to come in, and intend to divide the ſaid Eſtate amongſt the Joint-Creditors of the Bankrupts, by reaſon whereof the Plaintiffs Debts will be utterly loſt.

Joint Debts to be paid out of the Joint-Stock.

The Defendants inſiſt, that it was agreed by Indenture of Copartnerſhip, that all ſuch Debts as ſhould be owing on the Joint-Account ſhould be paid out of the Joint-Stock; and at the end of the Partnerſhip each Copartner take and receive to his own uſe his ſhare of the Joint-Stock, and that the Joint-Stock or Trade ſhould not be charged with the private or particular Debts of either of the

the Partners, but that each ſhould pay their private Debts out of their particular Eſtates, not included in the Joint-Stock: That if both the ſaid Parties ſhould be living at the end of the firſt three years of the ſix years, that the ſaid *Berman* ſhould come in Joint-Partner accordingly; and during the ſaid Joint-Trade, the Copartners became jointly indebted to the other Defendants, *Knight*, &c. in 6000 *l.* and that *Widdows* became indebted to the Plaintiffs, as aforeſaid, without the conſent of *Berman*; and the Mony due upon the ſaid Bonds was not brought into the Account of the Joint-Stock; and the ſaid *Widows* was only a Surety, and received none of the Mony; and the Defendants inſiſted, that the Joint-Creditors ought to be firſt paid out of the Eſtate of Partnerſhip; and that the Commiſſioners have no power to grant the Joint-Eſtate to pay the Plaintiffs, they being ſeparate Creditors of *Widdows*: And if a *Surpluſs* of the Joint-Eſtate, after the Joint-Creditors paid, then the Plaintiffs can have but a joint-moiety of ſuch *Surpluſs*, towards their ſatisfaction, the ſaid *Bermans* moiety being not liable to pay the ſaid *Widdows* his ſeparate Debts; and the Debts then claimed were the proper Debts of the ſaid *Widdows*; and yet after all the Joint-Debts are paid, there will be an overpluſs; ſo that thereby the ſaid *Berman* will

will be discharged, and have Mony paid unto him: But if the Plaintiff, and other ſeparate Creditors of *Widdows* be admitted to the Joint-Eſtate, there will not be ſufficient to pay the Joint-Creditors; ſo that thereby not only *Bermans* Eſtate will be applied to pay *Widdows*'s Debts, but will be liable to the Joint-Creditors. But there can be no diviſion of the Joint-Eſtate whereby to charge any part thereof with the private Debts of either Party; and till the Joint-Debts are paid, and till diviſion made of the *Surpluſs*, both parties are alike intereſted in every part of the ſaid Joint-Stock; that the Commiſſioners have no power by the Commiſſion to adminiſter an Oath to the Plaintiffs for proof of their Debts, they claiming Debts from the ſaid *Widdows* only; and the Commiſſion is againſt *Widdows* and *Berman* jointly, and not ſeverally, and therefore cannot admit the Plaintiffs Creditors.

Separate Creditors.

Creditors.

The Court declared, that the Eſtate belonging to the Joint-Trade, as alſo the the Debts due from the ſame, ought to be divided into moieties, and that each moiety of the Eſtate ought to be charged in the firſt place with a moiety of the ſaid Joint-Debts; and if there be enough to pay all the Debts belonging to Joint-Trade, with an overplus, then ſuch overplus ought to applied to pay the particular Debts of each Partner; but if ſufficient

ficient ſhall not appear to pay all the Joint-Debts; and if either of the ſaid Partners ſhall pay more than a moiety of the ſaid Joint-Debts, then ſuch Partner is to come in before the ſaid Commiſſioners, and to be admitted as a Creditor, for what he ſhall ſo pay over and above the moiety; and was decreed accosdingly.

Per North, Chief Juſtice. If there are Accounts between two Merchants, and one of them becomes a Bankrupt, the Courſe is not to make the other, who perhaps upon ſtating the Accounts, is found indebted to the Bankrupt, to pay the whole that was originally intruſted to him, and to put him for the recovery of what the Bankrupt owes him, into the ſame condition with the reſt of the Creditors; but to make him pay that only which appears due to the Bankrupt on the foot of the Account. *Aliter*, for Accounts between them, after the time of the others becoming a Bankrupt, if any ſuch were.

One Merchant is only to pay what is due to the other Merchant on Account.

CHAP. XVI.

Of other things to be done, or the Conſequentials after Examination, Diſcovery and Diſtribution.

Remedy for the Creditors for the Remainder of their Debts.

BY the Statute 13 *Eliz. cap.* 7. It is Enacted, *That if the Creditors of the Bankrupt be not fully ſatisfied, or otherwiſe contented for their Debts and Duties, by the ways and means before ſpecified and declared; that then the ſaid Creditor or Creditors, and every one of them ſhall, and may have their Remedy for the Recovery and Levying of the reſidue of their ſaid Debts or Duties, whereof they ſhall not be fully ſatisfied, paid or otherwiſe contented in form aforeſaid, againſt the ſaid Offender or Offenders, in like manner and form as they ſhould or might have had before the making of this Act. And that the ſaid Creditor or Creditors, and every of them, ſhall be only barred and excluded by vertue of this Act, of, and for every ſuch part and portion of the ſaid Debts and Duties, as ſhall be paid, ſatisfied, diſtributed or delivered unto him or them by order of the ſaid*

ſaid perſons, as is aforeſaid; and of no more portion or parcel thereof.

Suppoſe the Aſſignee of the Commiſſioners hath ſued a Debtor of the Bankrupt, and recovered upon Bond made to J. S. and diſtribution is made to the Creditors, amongſt whom J. S. was one, and he is not ſatisfied: He ſues the Bankrupt himſelf upon the Bond formerly made to him, and which was produced and proved before the Commiſſioners; in whoſe name ſhall he Sue, and how ſhall he Declare? The Act gives him leave to Sue in like manner and form as he might have done before the making of this Act: So that I conceive he may Sue in his own Name; but when he Declares, he muſt confeſs what part he hath received, but not ſet forth how, and which way he received it. *Q.*

To ſhew how the Law hates a Knave, and favours honeſt Creditors, I ſhall ſet down a ſhort Caſe, which tho' not very pertinent to the matter in hand, yet it diſcovers how that a man may in ſome Caſes recover the Remainder of his Monies, tho' he hath given a Releaſe.

A Scrivener runs away with 2000 *l.* with which he was intruſted to lend out, and abſconds himſelf; and after ſome time writes to the party, that if he will take 500 *l.* of his Mony, and give him a Diſcharge, he ſhould have it; which he did, not knowing how to come by his Mony;

Decree for Mony againſt a Mans own Releaſe.

Mony ; yet after the Creditor was relieved in Chancery for the reſt, notwithſtanding his own Releaſe, *Inter* Dr. *Lake* and *Deane* ; for by Lord *Egerton*, *Volenti non fit injuria, ſi dolo ſit inductus ad conſentiendum.*

Of the Commiſſioners Account to the Bankrupt, and of the Overplus of the Eſtate, if any be.

BY the Statute 13 *Eliz. cap.* 7. It is Provided and Enacted, *That ſuch of the ſaid Commiſſioners as ſhall put the ſaid Commiſſion in execution, ſhall upon Lawful Requeſt to them made by the ſaid Bankrupt, not only make a true Declaration to the ſame Bankrupt , of the employing and beſtowing of their ſaid Lands, Tenements , Offices, Fees, Goods, Chattels and Debts ſo paid and ſatisfied to their ſaid Creditors, but alſo make payment of the overplus of the ſame (if any ſuch ſhall be) to the ſaid Bankrupts, their Executors, Adminiſtrators or Aſſigns.*

By the Statute of 1 *Jac. c.* 15. It is further Enacted, *That ſuch of the ſaid Commiſſioners as ſhall put the ſaid Commiſſion in execution, ſhall upon Lawful Requeſt to them made by the ſaid Bankrupt, not only make a true Declaration to the ſaid Bankrupt , of employing and beſtowing of his, her or their ſaid Lands, Tenements and Hereditaments,*

reditaments, Offices, Fees, Goods, Wares, Monys, Chattels and Debts, which ſhall be paid and ſatisfied to their ſaid Creditors, as is in like Caſe limited and appointed by the ſaid former Statute, made in 13 Eliz. *but alſo make payment of the overplus of the ſame, if any ſuch ſhall be, to the ſaid Bankrupts, their Heirs, Executors, Adminiſtrators and Aſſigns; and that the ſaid Bankrupts, after the full ſatisfaction of the ſaid Creditors, ſhall have full power and authority to recover and receive the Reſidue and Remainder of the Debts to them owing.*

If the Bankrupt die, yet his Executors ſhall have an Action againſt the Commiſſioners to account. *Quære*, If all the Commiſſioners die, whether the Executors, or Executor of the Survivor ſhall be accountable.

What Remedy the Bankrupt, or Creditor, or others may have in Caſe of Miſdemeaner againſt the Commiſſioners.

IF the Commiſſioners do not purſue the Acts of their Commiſſion, in ſuch Caſe the party hath no other Remedy but to put in a *Traverſe* contrary to the finding of the Commiſſioners, that he is a Bankrupt, and ſay he is not a Bankrupt, 8 *Rep.* 121. For a Certificate of the Commiſſioners, that a man is a Bankrupt, is no Eſtopple to the Party; *Traverſe.*

but that he may aver againſt this, and *Traverſe* that he is not a Bankrupt: The Commiſſioners are not Judges, but have only an Authority, and the Party grieved hath no other Remedy, not by Writ of Error or otherwiſe.

If the Commiſſioners will not pay a Creditor his rateable part, he ſhall have his Action of Debt, *per Stone.* Chancery I conceive will relieve more properly.

A Decree was made 4 *Jac. inter Wood* and *Hayes*, to relieve one which had double taken from him (as a Concealer) by vertue of the Statute of Bankrupts, upon indirect dealing by Commiſſioners in the execution of the Commiſſion.

Death of the Bankrupt.

Note, By the Statute 1 *Jac. c.* 15. It is Enacted, that after any Commiſſion of Bankrupts ſued out, and dealt in by the Commiſſioners; if the Offender happen to die before Diſtribution, yet nevertheleſs the Commiſſioners ſhall, and may in that Caſe proceed in Execution in, and upon the ſaid Commiſſion for, and concerning the Offenders Goods, Lands, Tenements, Hereditaments and Debts, in ſuch ſort as they might have done, if the Party Offender were living.

Allens

Allens *Caſe in Chancery.*

April 1 *Jac. R.*

Edwards, a Citizen of *York*, that had born the Office of Sheriff there, being indebted to *Allen*, *Haberſley* and others of *London*, for Wares, became Bankrupt, becauſe he ſuffered himſelf to be *outlaw'd* at the Suit of Miſtreſs *Young* of *York*, for Debt.

Octob. 1 *Jac. R.*

Allen and *Haberſly*, and ſome other Creditors of *London*, by a Petition to Lord Chancelor, procured a Commiſſion upon the Statute of Bankrupts againſt *Edwards* to Sir *Thomas Bennet*, Sir *William Rumney*, Mr. *Nicholas Fuller* and Mr. *Richard Aldworth*.

Decemb. 3 *Jac.*

The Commiſſioners did ſell by Deed of Bargain and ſale enrolled, all the Bankrupts Lands to *Allen* and *Haberſley* for 400 *l.* the Land being then worth 2400 *l.* but ſold it ſo cheap as 400 *l.* in reſpect of Incumbrances, being Mortgaged to Alderman *Boles* his Son, and with a Statute of 2000 *l.* to Alderman *Boles* himſelf, defeazanced to pay the Mortgage Mony, and two Hundred pounds more lent by the Alderman; and all ſuch other Sums as *Edwards* then owed to Alderman *Boles* or *Smith*, or ſhould owe for Wares delivered, or to be delivered within three years following; and it ſtood alſo incumbred with a Statute of

Lands ſold by the Commiſſioners with Incumbrances before he became a Bankrupt.

Laſt Certificate of the Commiſſioners proved this.

1500*l.* to Alderman *Boles* himſelf defeazible, firſt for 800*l.* and after upon 200*l.* more lent for 1080*l.* (the 80*l.* being intereſt) and it ſtood alſo incumbred with a Leaſe for 80 years of part made to one *Cheney*; all which Incumbrances were made long before he was Bankrupt and before he became indebted to *Allen* or any of the *Londoners* which ſued out the Commiſſion.

May 4. *Jac.*

First Certificate.

After this Sale the Commiſſioners, and *Allen*, and all the other Creditors that ſued out the Commiſſion upon full conſideration had of the Eſtate of the Bankrupt, how it ſtood incumbred with the Mortgage, Statutes and Leaſe, made agreement with the Bankrupt and his Friends, to this effect, that the Creditors would take ten ſhillings in the pound for their due Debts, and *Smith* and *Wood* (*Wood* only being a Creditor that joined not in the Commiſſion) undertook on the behalf of the Bankrupt, to be bound for payment thereof to the Creditors; And it was agreed that *Allen* and *Aberſley* ſhould convey the Bankrupts Lands to them for their Security, which agreement was certified by the Commiſſioners; and they did alſo certifie that *Allen* after this agreement (being ſo Godly and Charitable) refuſed the agreement, and ſought the advantage of Law to the great loſs and hindrance of the reſt of the Creditors, and to the utter undo-

Agreement by the Commiſſioners with the Bankrupt to take 10*s.* in pound.

2. Of the Creditors bound for the payment of it.

And the Bankrupts Lands conveyed to them for ſecurity.

The Agreement certified by the Commiſſioners.

Refuſal to perform the Agreement.

undoing of *Edwards* the Bankrupt, his Wife and Children for ever.

In execution of this Agreement 12 *l.* 10 *s.* was paid to one of the Creditors, and Books drawn by Mr. *Fuller*, and ingroſſed ready for perfecting of the aſſurances. Depoſitions prove this.

All which notwithſtanding *Allen* refuſing the Agreement with *Haberſley*, preferred a Bill in Chancery againſt *Edwards*, Alderman *Boles*, *Smith*, *Cheney*, *Wood* and *Edwards* his Father (a man 80 years old) complaining that the Mortgage, Statutes and Leaſe were all fraudulent, and the Mony being paid, were kept on foot by practiſe to prejudice the Creditors, and the ſale made by the Commiſſioners. 1. One Creditor prefers his Bill, ſuggeſting that the Incumbrances were fraudulent.

Edwards, the Bankrupt, *Smith* and *Wood* preferred a Croſs Bill againſt *Allen* and *Haberſley* for the performance of the Agreement of ten Shillings in the pound, and to convey the Land to *Smith* and *Wood*, according to that agreement. The other Creditors prefer a Croſs Bill to perform the Agreement.

At the hearing of the Cauſe, upon *Allens* Bill the Lord Chancellor finding it confeſſed, that of the Mortgage Mony there was but 30 *l.* unpaid, ordered that *Allen*, paying that thirty pound ſhould have the ſame conveyed to him, and *Haberſley* and Alderman *Boles* his Son, and the Statute of 2000 *l.* diſcharged, which was done accordingly, and a Decree made, that *Allen* and *Haberſley* and their *Octob.* 20. 16 *Jac.* The Incumbrances decreed to be diſcharged, and the Land to be enjoyed by the two Creditors.

their Heirs ſhould enjoy the Land according to the ſale of Commiſſioners, free from theſe Incumbrances and Charges of Alderman *Boles* his Statutes of 1500 *l.* was left to the Law; howbeit upon another motion, his Lordſhip ſtaid the *Liberate*, after the Extent upon that Statute, and ſo it reſted.

Alparent.

Allen having gotten the Incumbrance thus clear'd by the Court of Chancery, ſought to hold the Lands for the 400 *l.* only, which was worth 2400 *l.* albeit he had Covenanted with the Commiſſioners in the Bargain and Sale, that if the Lands were ſold for more than for 400 *l.* within three years, they ſhould pay the overplus which it ſhould be ſold for above that 400 *l.* towards ſatisfaction of Creditors; and all the Incumbrances being cleared within the three years, as aforeſaid, yet would he hold the Land for 400 *l.* and pay no more for it.

The Covenant proved in the Bargain and Sale.

Commiſſioners ſell Land for 400 *l.* which was worth 2400 *l.* (becauſe of Incumbrances which were not real) and the Vendee would enjoy it for that againſt the other Creditors.

Hillary 7 Jac. Regis.

Allen gets a Commiſſion out of the Chancery to the Sheriffs of *York* there, to put him in poſſeſſion of the Land, upon the firſt Decree in Chancery made for him; and *Allen* with the under Sheriff caſt *Edwards* Children all out of Doors, and altho' the under Sheriff with Tears in his Eyes beſought *Allen* to take compaſſion on them, yet he would not yield to any thing, but turned them out in Froſt

By Affidavit of *Goland* 13 *April* 1610. 6 *Jac.*

Vendee gets poſſeſſion upon the firſt Decree.

Froſt and Snow, that they were inforced to ſccour themſelves in a Maſhfat; and when ſome of the Tenants of the Land would have taken them in and relieved ved them, *Allen* threatned to turn them out of their Tenements if they did ſo, and did turn out one of Tenants out of his Houſe who entertained them but one Night.

Affidavit of weight.

Alſo *Allen* took divers Cattle and Goods that were *Edwards* Fathers Goods, and not the Bankrupts, as ſix Kine, *&c.* and the Old Man ſuing for them in the Kings Bench, *Allen* procured an Injunction out of the Chancery, and ſtaid all the Suits ſo long as the Old Man lived, and who ſhortly after died.

Edwards and his Wife here at *London*, following the Suit to be relieved againſt *Allen* in *July* 8 *Jac.* died both together of the Plague, leaving ſeven poor Children behind, one ſucking at Nurſe in *Yorkſhire.*

The Lord Chancellor being informed of this extremity by Petition and Affidavit, gave direction that the Bill which *Edwards*, *Smith* and *Wood* preferred upon the Agreement of ten Shillings in the pound, ſhould be revived on the behalf of the poor Children; and his Lordſhip aſſigned *Wood* their Gardian, to proſecute, and *Francis Moor* he aſſigned to be of their Councel *in Forma Pauperis.*

A Petition 17 *Aug.* 1610. 8 *Jac.*

Bill revived to perform the agreement of 10 *s.* in the pound.

8 *Jac.* 3 *Nov.* aſſignment.

This

This Cauſe coming to hearing, and the Agreement appearing confeſſed by *Allens* Anſwer, and proved by the Certificate of the Commiſſioners and divers Witneſſes, and the Covetous and unconſcionable dealing of *Allen* appearing plainly by the Covenant which they took of *Allen*, that *Allen* ſhould pay the overplus of the value of the Land above the 400 *l.* if they ſhould be ſold for more, and the Unchriſtian and Uncharitable uſage of *Allen* towards the poor Fatherleſs and Motherleſs Children of *Edwards* being all Infants, not able to help themſelves conſidered.

Agreement Decreed.

The Lord Chancellor did Decree, that *Allen* and the reſt ſhould be ſatisfied with ten Shillings in the pound for their Debts, according to their Agreement, certified by thé Commiſſioners, but no abatement of the 400 *l.* paid for the Land, nor of the thirty pound paid for the Mortgage; and withall, that *Allen* ſhould have allowance for Coſts of Suit, reaſonable; and for this purpoſe his Lordſhip made a reference to Sir *John Tindal* to caſt up the Eſtate of the Bankrupt and the Debts, and to certifie what overplus he found for relief of the poor Children.

Reference to a Maſter to caſt up the Eſtate and Debts.

Sir *John Tindal* often heard the Cauſe, and the Allegations of *Allen*, and his Councel, and in the end made a certificate of the Eſtate Real and Perſonal of the Bankrupt, and of the Debts, and made

The Maſters Certificate.

made all allowances as by the Order was directed, and gave 200 Marks to *Allen* for Coſt of Suit, and 100 Marks to *Haberſley*, and 70*l.* to all the Creditors that ſued out the Commiſſion of Bankrupt; and for the reſidue did purpoſe in his Opinion to be fit that *Allen* ſhould keep the Land, and pay the overplus of the value of the Land above the 400*l.* or depart with the Land to *Smith* and *Boles*, who would pay *Allen* and the other Creditors according to the Report, and yield the overplus to the Children, amounting to 600*l.* or thereabouts.

The Lord Chancellor, upon reading the Report, gave time to *Allen* to make his election, whether he would keep the Land and pay the Mony, or depart with the Land and receive his Mony. 13 *Nov.* 21 *Jac.*

For that *Allen* made no Election, but inſiſted upon the advantage, to have the Land for the 400*l.* which was worth 2400*l.* and would yield nothing to the poor Children, nor to the Creditors, but dealt ſo mercileſly with them whoſe Parents loſt both their lives in following their Suit to be relieved againſt *Allens* Unchriſtian and Barbarous Dealings.

The Lord Chancellor did make Decree, that *Allen* ſhould receive the Mony mentioned in the Report, which is much more than in Equity is any way due unto him, and convey the Lands to *Boles* and *Smith*, two ſufficient Men, who

Decree that the Truſtee ſhould receive his own Mony, and depart with the Eſtate.

who would be bound to pay the Creditors, and *Allen* alſo, and yet pay the overplus being 600 *l.* or thereabouts, amongſt the poor Children.

For not performing the Decree *Allen* is committed.

Truſtee for not performing the Decree, is committed.

The pitiful Cries of the Father and the Mother dying, as is aforeſaid, and of the poor Orphans, do call to God for relief, and moved the heart of the Chancellor to take compaſſion upon them, and to take ſuch order as he hath done.

Indictment, for that the Chancery decreed Lands after Judgment at Law.

Note, Where *Allen* in the Bill of Indictment ſetteth forth, that he had two Judgments for his Debt in the Common Pleas, before the Suit in Chancery begun, which Judgments he ſuppoſeth to be called into Examination by this Suit and Decree in Chancery againſt him, contrary to the Laws and Statutes.

To this it is anſwered, *Firſt*, That theſe Judgments were not alledged by *Allen* in his own Bill againſt *Edwards* in Chancery, nor in his Anſwer to *Edwards* Bill, nor in any Replication, Rejoinder, Depoſition, Report or Motion in Chancery; neither were they ſo much as ſpoken of or informed to any Councel or others, and there is no Order in Chancery concerning thoſe Judgments.

Secondly, That theſe Judgments to be a year after *Edwards* became a Bankrupt, for he was Bankrupt *Primo Jacobi*, and

and the Judgments were *Secundo Jacobi.*

Note, That theſe Judgments ſtand in force againſt the Bankrupts Body, or any Lands or Goods which he ſhould afterwards obtain, and were not diſpoſed by the Commiſſioners.

Allen himſelf ſued out the Commiſſion of Bankrupt with other Creditors, and was firſt named in the Petition to the Lord Chancellor for getting the Commiſſion, and attended in perſon in execution of that Commiſſion at all meetings, by which he himſelf did decline from the ſtrength of his Judgments, and ſubmitted himſelf to be ordered by the Commiſſioners for his Debt before any Suit in Chancery begun.

Note, Where *Allen* by his Bill of Indictment ſuppoſeth his Freehold to be drawn in queſtion in the Chancery, contrary to the Statute in *Magna Charta*, it is to be anſwered, that albeit Freeholds have been always ordered in Chancery upon Equity, where the Common Law cannot help the Parties, yet in this particular Caſe it is to be obſerved, that *Allen* himſelf was firſt Plaintiff in the Chancery, and did draw in queſtion the Freehold which then was in Alderman *Boles* his Son by a Mortgage forfeited, for which Freehold to be conveyed to himſelf, he obtained the Decree in Chancery, and had it conveyed accordingly upon

Freehold Lands ordered in Chancery upon Equity, where the Common Law cannot relieve the Parties.

upon matter of Equity (*viz.*) becauſe there was but 30*l.* unpaid of the Mortgage Mony.

Therefore if the Chancery did well when it dealt with the Freehold for *Allen*; why ought not the Chancery upon a new Matter of Equity, make Decree againſt *Allen* to depart with the ſame Freehold again, when he would have Land worth 2400 *l.* to the defrauding of Creditors and poor Orphans, and in abuſe to the Commiſſioners of Bankrupts and Court of Chancery.

Of Bills of Conformity.

Becauſe Petitions for Compoſition are mentioned in the Statutes, I ſhall here add ſome Orders made in Chancery about the ſame, and publiſhed in open Court, *Octob.* 31. 1620.

THAT no Compulſory Order be granted to Creditors to conform themſelves, and agree unto any Rate or Compoſition at the Suit and Petition of the Debtor or inſolvent himſelf, but only at the Suit of the Creditors, in imitation and according to the Equity of the Statute of Bankrupts.

That

That where ſuch Suits are exhibited in the behalf of the Creditors, it be not enough that the Creditors are named in the Bill or Petition; but that there ſhall be always affixed to the Bill or Petition the agreements of the Creditors under the Hands and Marks of ſo many as have agreed, with a recital of the Sums and Times of their particular Debts.

That to the end there may be a ground of Information unto the Court, what the Debts are in truth, which otherwiſe may be but in ſhew; there ſhall always be before any Order is granted, a Reference made to ſome of the Maſters of the Court, or other Commiſſioners upon due Examination, to certifie the Court what the Debts are in truth, and of what Nature, and upon what Security; before which Maſters and Commiſſioners ſhall alſo be heard the Informations and Allegations of ſuch Creditors as have not compounded.

That no releaſe be given upon any Bill or Suits, except the Debts of the Creditors that have agreed, amount at leaſt to full three parts in four, to be divided of the total of the Debts; and not in theſe Caſes neither, but ſparingly, by the Diſcretion of the Court, upon hearing what may be alledged on both ſides.

That no Proceedings at Law, in Caſe of any ſuch Suits be ſtaid againſt any Sureties of the Inſolvent, nor againſt the Lands or Goods of the Inſolvent himſelf in caſe of Recognizances or Statutes, but only againſt the perſon of the Inſolvent.

It was a Saying of the Lord Chancellor *Elſmere*, that againſt Uſurers, Bankrupts, Perjured Perſons, Couſeners, *&c. Quælibet preſumptio creſcit in probationem*; and that one Proof, with ſome preſumptions, is ſufficient to induce him to Decree againſt ſuch.

CHAP.

CHAP. XVII.

Of Scandalous Words relating to a Mans Trade.

I Shall now add ſome Caſes out of our Books, about Actions on the Caſe, for calling one Bankrupt, or words to ſuch Effect, by which an honeſt Tradeſman may know how, and when to puniſh a Malicious, Scandalous Calumniator, and one that thinks it a ſlight matter to ſtab the Reputation of his Neighbour.

This Action on the Caſe will lie, for ſaying of a Merchant, Mercer, Grocer, Shoomaker, Dyer, Weaver, Graſier, Cornmaſter or Baker in *London*, a Millener, or any other Tradeſman that gets his Living by Buying and Selling, that he is a Bankrupt, *Noy* 158. *Hutton* 49. *Stiles* 75. 1 *Boulſt.* 267. 4 *Rep.* 19. *Croke Eliz.* 268. 1 *Rol. Abr.* 61, *Long & Lane*, of a Tanner, *quære* 11 *Brownl.* 16.

But to ſay of a Tradeſman, thou oweſt more than thou art worth, and art not able to pay thy Debts, it's not Actionable, *Stiles* 213. *Q.*

Thou art a Bankruptly Knave, or a Bankrupt Knave, is Actionable, 4 *Rep.* 19. *Mittons* Caſe. 2 *Bulſt.* 210. *Dyer* 72.

Croke Eliz. 911. 1 *Bulſt.* 110. *Hutton* 13, 14. *dubitatur ibi. Vide Stiles* 420. *Croke Jac.* 345, 578.

He is a *Bankrupt Rogue*, Actionable, *Godb.* 152. *Croke Eliz.* 21. *Hutton* 52.

He is a *Bankrupt Scrub*, is actionable, *Stiles Rep.* 75.

He is a *Bankrupt Slave*, is Actionable, *Croke Jac.* 58. *Popham* 184. But he muſt be a Tradeſman, *Croke Jac.* 424. *Loyd* and *Pearſe.*

Thou art a *Bankrupt Knave*, is Actionable. *Aliter*, Had it been *Bankruptly Knave*, *Croke Jac.* 345. *Selbys* Caſe. *Q.*

To ſay of a Man he will be a Bankrupt within two days, is Actionable, *Dyer* 72. 4 *Rep.* 19.

I will prove that *J. S.* hath been a Bankrupt, and hath agreed with his Creditors for a Noble in the pound, and I will prove it, *Hill.* 3 *Jac. B. R. Edmonds* Caſe.

I will prove thee a Bankrupt, Action lies. So, I will prove thee a Bankrupt by ſuch a time, 1 *Croke* 193.

He is a Bankrupt and fled beyond the Seas for Mony, Action lies, *Trin.* 9 *Jac. B. R. Trulocks* Caſe.

He is not worth a Groat, he is a Hundred Pounds worſe than nothing, 1 *Croke* 193, 231. *Hutt. Rep.* 152. 2 *Bulſt.* 267. *Croke Jac.* 578. Act. Caſe lies. *Croke Car.* 265. *Goodears* Caſe.

He

He is a Bankrupt, and I will drive him out of the Country, Action lies.

Who art thou? A Bankrupt? And waſt a Bankrupt, Croke Eliz. 273.

To ſay of a Merchant he is broken, Action lies, *H.* 17 *Jac. B. R. Johnſons* Caſe.

To ſay of one that doth Merchandize for Lead in any County, and get his Living by it, *he is a Bankrupt and Beggarly Gentleman*, Action lies, 1 *Bulſt.* 41. *Huttons Rep.* 40.

Words ſpoken of a Cornmaſter or Baker in *London*, Thou art a broken Fellow, and haſt cheated me of 200 *l.* Action lies, *Stiles* 429.

So for this ſaid of a Millener in *London*, Thou art in a breaking and decayed Condition, and I will prove it; and if you queſtion me, I will prove it to your diſgrace, *Stiles* 425.

To ſay of a Merchant that is to have a Trial at *Guild-Hall*, he is broken, *Innuendo*, he is not able to pay for the Wares he bought, and I warrant you he dares not be at the Trial at *Guild-Hall*, *Croke Jac.* 562. Action lies.

To ſay of a Grocer, he is a Beggarly Fellow, and not able to pay his Debts, Action lies, *Croke Eliz.* 339, 643.

It is ſaid no Action will lie for this, He is a baſe broken Raſcal, and hath broke twice, and I will make him break the third time, *Noy* 77. *Bend.* 170. *Marſhall*

and *Allen*, *Lach. p.* 114. *Hills* Caſe. To ſay he will break ſhortly, Action lies, by *Doderidg*, *&c.*

To ſay of a Merchant or Tradeſman, Truſt him not for he will be thy undoing, no Action lies, 1 *Croke* 171. Nor for this, I will ſue out a Commiſſion of Bankrupts againſt *J. S.* Nor for this, Thou art an Arrant Knave, for thou haſt cozened all *Coventry*, 1 *Bulſt.* 162, 163. Nor for this ſaid of a Merchant, Doth he owe you Mony? Get it quickly, and take heed how you truſt him, *Croke Eliz.* 541. *Vaſpicks* Caſe, 1 *Rolls Abr.* 61.

If one be a Merchants Apprentice, and he doth Merchandize for another man, and be called Bankrupt; or if one have been a Merchant, and hath given it over, and a man call him Bankrupt; in either of theſe Caſes the Action will not lie, but 1 *Rolls Abr. contra*, 61. *Gray* and *Weſton*; and yet if he have reſumed his Trade again, and then be called ſo, Action lieth, *Noy* 33. 1 *Bulſt.* 267. For he may trade again, *Gardner* and *Hopland.*

E. a Merchant brought Action againſt *W.* for theſe words, He would prove that Mr. *E.* had been a Bankrupt, and had agreed with his Creditors for a Noble in the Pound, it's Actionable, *H.* 3. *Jac. R. B. Rot.* 85.

Thou

Thou art not worth a Groat, not Actionable, *P.* 15. *Car. B. R.*

If a man ſaith to *A.* who is a *Dier*, *Thou art not worth a Groat*, no Action lies for theſe words; tho' it be averred that in *Exeter* where the words were ſpoken, they *tantamount* to thou art a Bankrupt, 15 *Car. B. R.* 1 *Rol. Abr.* 86. *Moon* and *Axe.*

If a man ſaith of a Grocer or other Tradeſman, You are a baſe Beggerly Knave, and are not able to pay your Debts; and avers that according to the phraſe and underſtanding of the place where this was ſpoken, theſe words are underſtood that he was a Bankrupt, Action on the Caſe lies, *P.* 11 *Car. B. R. Jackſon* and *Lewis.*

Thou art a *Cheating Merchant*, is Actionable, if a Diſcourſe was of his Trade, *Trin.* 17 *Car. Lambell* and *Hancock.*

To ſay of a Scrivener, he is a broken Runnaway, and dares not ſhew his Face, it's Actionable, *Mich.* 13 *Car. B. R. Beſt* and *Loit.*

He is a Broken Raſcal, and hath broken twice already, and I will make him break the third time, Action lies not: To ſay he will break ſhortly, will bear an Action, but not to ſay I will make him break, *Latch p.* 114. *Hills* Caſe.

He is gone, and dare not ſhew himſelf for Debt, and he is a Bankrupt for ought I know, Action lies, *Stiles p.* 130, 142. *Jones* and *Jacob.*

A. is a Foreman in a Shoomakers Shop, and one ſaith of him, It is no matter who hath him, for I warrant whoſoever hath him, he will cut him out of Doors, Action lies, 1 *Rols Abr.* 60. *Ellis* and *Hunt.*

In an Action on the Caſe, if the Plaintiff declare that where he was a Servant to *J. S.* and as a Journyman to him, ſold divers Commodities for his Maſter truly, and that he gained his Living by his Service; and the Defendant having communication of his Sellings, ſaid of the Plaintiff, thou haſt cozened me of 5 *l.* in a piece of Stuff, and haſt cozened me of 600 *l.* more; thou haſt maintained thy ſelf and others with my Mony, and thou didſt take four or five pound out of the Box, Action lies upon this Declaration, 1 *Rolls Abr.* 60. *Phillips* and *Ellaker.*

In Action on the Caſe, if the Plaintiff declares he was a Merchant, *&c.* the Deſendant intending to defame him in his Trade, having communication of his Trade, and of a Partnerſhip between the Plaintiff and *J. S.* before had in a certain Ship, called *B.* ſpake theſe ſcandalous words of the Plaintiff, He is a Baſe Cheating Knave, and hath cheated *J. S.* (the ſaid *J. S. innuendo*) and I will prove it; for he received of *C.* in Partnerſhip 20 *l.* and gave an account unto *J. S. pred'* *J. S. innuendo*) but of 5 *l.* received of the ſaid *C.* Action lies, for it digraceth him

him in his Partnerſhip, which is a part of his Trade as a Merchant, *Trin.* 15 *Car. B. R. Arundel* and *Maſey.*

One ſaid of a Tradeſman, He is a broken Bankrupt, and a declined man, not able to pay his Debts, and therefore is run the Country; altho' he doth not alledge he uſed any certain Trade, yet Action lies if he uſed to Buy and Sell and live by it, 1 *Rolls Abr.* 60. *Boyer* and *Shale.*

One ſaith of Tradeſman, He is a Baſe Beggarly Fellow, and if he had not had my help, he had not had a bit of Bread to put in his Head, and I have exactly caſt up his Eſtate, he is not able to pay 2 *s.* 6 *d.* in the Pound to his Creditors; Action lies without averring any particular dammage, *P.* 1651. *Rooks* and *Rooks.*

Theſe words were ſpoken of a Merchant, He is a Beggarly Fellow and not worth a Groat, and not able to pay his Debts, and goes abroad with his Man double armed for fear of the Bailiffs; but it is not laid, that he continued Merchant at the time of the ſpeaking; but the Court inclined that the words were Actionable, and the Profeſſion ſhall be intended to continue in him till the contrary be ſhewn, *Siderfin, p.* 424. *Drake* and *Hill.*

The

The Plaintiff declares he was a Merchant by the ſpace of twenty years, without ſaying (laſt paſt) and that 24 *Jac.* he goes beyond Sea, and 25 *Jac.* he returns here from *Hamborough*, and the Defendant ſaid of him, He came from *Hamborough* a Broken Merchant; the words were Actionable, and his Profeſſion ſhall be intended to continue. *Locroft* and *Durnfords* Caſe, cited in *Drake* and *Hills* Caſe.

To ſay of one, He is a Cheat, is not Actionable; but if the Plaintiff was a Merchant, and the Defendant ſaith of him, He is a Cheating Merchant, it is Actionable, cited in *Siderfin*, 433. in *Kirle* and *Oſgoods* Caſe.

Per Twiſden, cited in *Siderfin*, *p.* 434. Lord *Peterboroughs* Caſe, it was adjudged 5 *Car.* that to ſay, *I do not know but that* J. S. *is a Bankrupt*, is Actionable.

The Court conceived theſe words (Bankruptly Knave) to be Actionable, 1 *Keb.* 439. *Booth* and *Leech.*

Action on the Caſe was brought for calling one Bankrupt, and upon General Iſſue, found *pro Querente*, and 150 *l.* Damages; the Court mitigated it to 50 *l.* but after upon great Advice, they Revoke this, and reſolved to leave ſuch Matters of Fact to the finding of the Jury, who know the quality of the Perſons and their Eſtates, and Damages ſuſtained by the Diſgrace. *Aliter*, In an Action which

Damages.

which is grounded upon a Cauſe that may appear to the view of the Court, *Palmer, p.* 314. *Hawkins* and *Sciet.*

If in Treſpaſs, the Defendant juſtifies that the Plaintiff was a Bankrupt, whereby he had a Commiſſion upon the Statute, and thoſe goods were delivered unto him, whereas the Plaintiff was not any Bankrupt, nor any Commiſſion iſſued, yet the Plaintiff for the words contained in the Plea, ſhall not maintain any Action, *Croke Jac.* 432. in *Weſton* and *Dobniets* Caſe. Plea.

Plaintiff Declares, Whereas 1 *April* 17 *Jac.* and for divers years before he was a Merchant, that the Defendant the ſaid 1 *April* 17 *Jac.* ſpake theſe words of the Plaintiff, He is a Bankrupt Slave; the Defendant juſtifies, becauſe the Defendant 1 *April* 15 *Jac.* became Bankrupt, and therefore he ſpake theſe words; Plaintiff demurred, and adjudged *pro Querente*: the Bar was inſufficient, becauſe he doth not alledge that he continued ſtill a Bankrupt, and without Averment, it ſhall not be intended that he continued ſo; for it may be that he afterward recovered himſelf, and became a Good Merchant and no Bankrupt, *Croke Jac.* 578. *Upſheer* and *Betts.* By this Caſe underſtand the Maxim, Once a Bankrupt, *&c.* Juſtification.

Action was brought for calling the Plaintiff Bankrupt, and he Declares by the Name of *J. E. Mercator*, and that he Declaration.

he by his Good Name had the Good Will of his Neighbours, *ac etiam Emendo & Vendendo* he acquired *diverſa Lucra*; Verdict *pro Quer'* and Judgment was arreſted, becauſe it doth not appear by the Declaration, that he got his Living by Buying and Selling, *Siderfin, p.* 299. *Emerſons* Caſe.

The difference was well taken in *Dottings* Caſe *Noy* 33. If a Merchant relinquiſh his Trade to live in the Country, in the nature of a Gentleman or a Farmer; to call him Bankrupt is not Actionable; but if afterwards he exerciſeth that again, and then is called Bankrupt, an Action then lies.

Declaration. It is not needful in the Declaration to ſay he was a Merchant, but to ſay he was Tradeſman is ſufficient, *Noy* 158. *Courtney* and *Tompſon*.

Words ſpoken of a Drover, that he is a Bankrupt, is Actionable, for a Drover is within the Statute of Bankrupts; but becauſe it was not averred, that he was a Drover at the time of the ſpeaking the words, it was held to be ill in *Collins* and *Malins* Caſe, *Jones Rep.* 304. 2 *Keb.* 274. *Amerſam* and *Fairfax*.

Declaration is, That he got his Living by Buying and Selling, albeit no certain Trade is mentioned, yet the Action for calling him Bankrupt, lay, *Bowyers* Caſe cited, 2 *Keb.* 274. *Amerſham* and *Fairfax*.

If

If one ſaith of a Man (who by his Trade may become a Bankrupt within the Statutes) that he is a Bankrupt, an Action lies.

Thou art a Bankrupt Rogue, ſpoken of a Woollwinder, Action lies not, *M. 2 Car. B. R. Barker* and *Ringroſe.*

By Mr. Juſtice *Wild*, in *Amſon* and *Blofeilds* Caſe, *Carters Rep. p.* 214. To ſay of a Merchant, *He hath eaten a Spider*; with an Averment what the meaning is, as much as to ſay he is ready to burſt, is Actionable. *Q.*

Here I ſhall add ſome Special Preſidents of Actions and Suits at Common Law and in Chancery, by which the Induſtrious Student may Form and Model his Draughts in Parallel Caſes.

Plea

Plea to an Indebitatus Assumpsit, that it was Assigned by the Commissioners of Bankrupts.

Protestation.

ACtio non, quia dicit ꝓtestando quod ipse non assumpsit super se modo & forma prout p̄d (Queri) versus eum queritꝫ protestando etiam quod idem H. non fuit indebitat̄ p̄fat querenti in aliqua denariorum summa ultra decem & octo Libras prout p Billam p̄d superius supponitꝫ ꝑ plito idem H. dicit qd̄ p̄d Jac existen subditꝫ natus hujus Regni Anglie p diversos Annos prox' ante Festum Sci Michis Archi Anno Regni, &c. 14 fuit communis pandoxator ac p totum idem temp⁹ victum & facultatem suam vivendi quesivit Et idem Jac sic negotians & victum suum querens infra tempus illud apud D. p̄d in Com K. p̄d devenit indebitatꝫ quibusdam J. H. & J. B. & alijs Creditorib⁹ suis existen subditis natis hujus Regni Anglie in diversis denariorum sum̄is attingen in toto ad sum̄am 200 l. legalis, &c. & amplius qd̄q̄ idem Jac sic idebitatꝫ existen infra temp⁹ p̄d scl̄t 1 Die Maij Anno, &c. xiij incepit custodire Domum suam Mansional apud D. p̄d & Latitare ꝑ timore Arrestationis ꝑ debis p ipsum Jac p̄fat J. D.

&

& alijs Creditoꝛib⁹ ſuis debit Et ſi- Act of Bank-
milit adtunc dedit mandatum ſerviẽ rupts denial.
ſuis negare Creditoꝛib⁹ ſuis ipſum p̃d̃
J. eſſe in ead̃ Domo ſua quando fuit
intus in ead̃ ad p̃craſtinand̃ debitoꝛes
ſuos de veris & juſtis Debis ſuis eis
p p̃d̃ J. adtunc debit & inſolut Ac ra-
tione p̃miſſoꝛ4 idem J. p̃d̃ 1 die Maij
Anno, &c. xiij ſup̃adict apud L. p̃d̃
in poch & warda p̃d̃ debitis ſuis p̃d̃is
tunc minime ſolut exiſtẽ manifeſte
devenit & adhuc exiſtit decoctoꝛ Ip-
ſoq; J. ſic decoctor exiſtẽ poſtea ſcilt
28 die Octob Anno Regni, &c. xiij ſu-
p̃adicto apud Weſtm̃ in Com̃ Midd̃
& ad Petitionem p̃d̃icto4 J. H. & J. Petition.
D. E. Com̃it C. tum & adhuc Dom̃
Cancellario Anglie fact & exhibit p
remedijs ſuis verſus p̃fat J. tunc ex-
iſtẽ decoctor in hac parte habend̃ ijſ-
dem J. J. & ceteris Creditoꝛib⁹ p̃d̃
J. de debis ſuis p̃d̃ tunc minime ſa-
tisfact quedam Commiſſio dicti Dom̃ Commiſſion.
Regis ſuper Statut contra Decocto-
res edit & p̃vis ſub Magno Sigillo
dict Dom̃ Regis ſigillat & hic in Cu-
ria p̃fat gerend̃ dat apud Weſtm̃ p̃d̃
eiſdem die & Anno quibuſdam J. P.
R. A. Ar R. W. W. W. & N. S. di-
rect fuit p quam quidem Com̃iſſionem
dict⁹ Dominus Rex tunc dedit plenam
poteſtatem & authoꝛitatem p̃d̃ Com-
miſſionar quatuoꝛ vel trib⁹ eoꝛum quo-
rum idem Dominus Rex p̃d̃ J. P.

vel

vel R. A. unum esse voluit juxta se-
palia Statuta de Decoctoribꝰ in hu-
jusmodi Casu edit & provis in dicta
Com̃issione menc̃onat non solum con-
cernen̄, &c. ꝓut supra (omittā tan-
tum hec verba, & alterius eorum) usq;
ꝓut p eandem Commission̄ plenius
apparet Virtute cujus quidem Com-
missionis Et vigore Statutorum p̄di-
ctorum p̄d̄, J. &c. tres Com̃issionar̄ de
Com̃issionar̄ p̄d̄ accept super se onere
execucon̄ Commissionis p̄d̄ super ma-
turam deliberationem inde capt ꝓ re-
medio Creditorum p̄d̄ postea sclt 10 die
Nov. Anno Regni, &c. xjv supradict
apud London̄ p̄d̄ in poch & warda p̄d̄
invenerunt p̄d̄ Jac ante emanac̃onem
Com̃issionis pd̄ devenisse & fuisse deco-
ctorem ad omnia intentiones & ꝓposi-
ta infra ꝓvision̄ & intencon̄ Statu-
toꝝ ꝑdict ac diversa deba & denario-
rum summas fore tunc debita & pti-
nen̄ Statuti p̄d̄ Jacobi a sepalibꝰ p-
sonis Et postea sclt eisdem die & An-
no apud London̄ p̄d̄ in poch p̄d̄ ijdem
tres Commissionarij p quandam In-
denturam suam assignationis inter ip-
sos J. &c. ex una parte & p̄d̄ J. H. &
J. O. ex altera pte fact cujus alte-
ram ptem Sigillis p̄d̄ J. P. &c. sigil-
lat idem H. hic in Curia p̄fert cujꝰ
dat est ijsdem die & Anno quantum in
ipsis fuit & Legitime potuerunt assig-
naverunt & transposuerunt p̄d̄ J. H.
&

Commissioners find him a Bankrupt.

Assignment of Debts.

& J. B. omnia & singula separalia debita & denar̄ summas ꝑticulariter & expeꝛs̄ menc̄onat̄ in quadam Schedula sive Inventoꝛio indentat̄ eid̄ Indentur̄ annex' & onerabil̄ debit̄ ꝑ ꝑsonas in dicta Schedula nominat̄ vel aliquam eoꝛum tunc debit̄ p̄dicto J. habend̄ & tenend̄ (Anglice sue forth) recuperand̄ recipiend̄ possidend̄ & gaudend̄ omnia & singula debita & denarioꝛum summas in dicta Schedula expressa Ac omnia alia debita ꝑ eand̄ Indenturam assignat̄ & quamlibet ꝑtem inde ipsis dictis J. H. & J. D. Executoꝛib⁹ Administratoꝛib⁹ & Assignat̄ suis & cuilibet eoꝝ ut eoꝛum ꝓpꝛium statum imꝑpetuum In qua quidem Schedula inter alia continetur quod decem & Octo Libꝛe fuer̄ debit̄ & ꝑtinen̄ status p̄d̄ Jac̄ ꝑ ipsum H. pꝛout ꝑ eandem Indenturam & Schedulam p̄d̄ hic in Curia ꝓlat̄ pleni⁹ apparet Quoꝛum p̄textu idem H. onerabilis devenit & adhuc existit ad solvend̄ p̄fat̄ J. G. & J. D. omnia debita & denarioꝛum sum̄as ꝑ ipsum al̄ debit̄ Statui p̄dicti Jacobi. Et hoc, &c. unde, &c.

Plea to Bond for performance of Covenants (or Articles) for payment of Rent, that the Plaintiff was a Bankrupt, and that the Defendant paid the Mony to the Aſſignees of the Commiſſioners of Bankrupts.

Quib⁹ lect & auditis idem Def' dicit qd̄ p̄d̄ Quer Accionem ſuam p̄d̄ inde verſus eum habere ſeu manutenere non debet quia dicit quod Articuli p̄dcd̄ in Conditone p̄d̄ (reciting the Articles) p̄out p Articulos p̄dictos inter alia plenius liquet & apparet Et quoad p̄d̄ xxij l. in Articulis p̄d̄ mencōnat ſoꝛe ſolvend̄ p ipſum H. p̄fat R. ad finem p̄dcd̄ termin̄ ſex Annoꝛ Idem H. ulterius dicit quod poſt confectiond̄ ſcripe obligatoꝛij p̄d̄ & Articuloꝛ p̄d̄ & ante p̄d̄ finem & expirationem p̄d̄ termin̄ ſex Annoꝛum ſcil decimo ſeptimo die Julij Anno Regni p̄d̄ nuper Dom̄ Regis ſexto decimo apud Civitat Exon̄ p̄d̄ p̄d̄ R. indebitatus fuiſſet cuidam M. B. ac diverſis alijs plonis Creditoꝛib⁹ p̄d̄ R. (exiſtend ſubdit nat infra hoc Regnum Anglie) in diverſis ſeperalib⁹ denarioꝛum ſummis in toto ſe Attingend ad Mille Libꝛas Legalis Monete Anglie ipſoꝝ S. ſic indebitat exiſtend idem R. poſtea ſcil 17 die Julij Anno Regni

Regni dicē Dom̄ Regis nunc 16 ſup̄dicto ijſdem Creditoꝛib⁹ de debitis ſuis minime ſatisfacē exiſtēs apud Civitat Exon̄ p̄d̄ pꝛo debito Arreſtat fuit Et ſuper Arreſtationem p̄d̄ ad pꝛiſonam dicti nuper Regis apud Civitat Exon̄ p̄d̄ ductus fuiſſet Et ibidem in Pꝛiſona p ſpatium duoꝝ menſium tunc pꝛoxⁱ ſequen̄ & amplius remanſit ad intentionem defraudand Creditoꝛes ſuos p̄d̄ de debitis ſuis p̄d̄ p ipſum R. ſic ut p̄fertur debit Et ſuperinde poſtea ſcil 1 die Octob Año 16 ſupꝛadict apud Civitat Exon̄ p̄d̄ Idem R. devenit decoctoꝛ (Anglice became a Bankrupt) infra Statut concernen̄ decoctoꝛes nuper edit & pꝛovis Quodq; p̄d̄ R. p̄dicto tempoꝛe quo ut p̄fertur devenit decoctoꝛ fuiſſet ſubdit⁹ p̄d̄ nuper Dom̄ Regis natus infra hoc Regnum Anglie videlt apud Civitat Exon̄ p̄d̄ Et adtunc & ibid & p multos Annos tunc ulterius elapſos querebat victum ſuum p viam Emendi & Merchandizandi Et ulteri⁹ idem H. dicit quod ſuperinde poſtea ſcil 17 die Febr Anno 16 ſupꝛadict apud Weſtm in Com Midd̄ ad Petitionem p̄d̄ M. & aliozum Creditozum p̄d̄ R. E. D. Mil adtunc Dom̄ Cuſtodi Magni Sigill Anglie ante tunc exhibit & facr p remedijs ſuis verſus p̄d̄ R. tunc exiſtēn̄ decoctoꝛem (Anglice became a Bankrupt) in hac parte habend̄ p̄fat

Act of Bankrupcy remaining two Months in Priſon.

M. & ceteris Creditoribꝰ p̄d R. de debitis suis p̄d tum minime solut sive satisfact existen quedam Commissio p̄d nuper Dom Regis super Statut contra decoctores (Anglice Bankrupts) Edit & p̄vis sub Magno Sigillo dicti nuper Domini Regis Anglie sigillat geren dat apud Westm p̄d p̄d 17 die Febr Anno 16 supradict dilectis & fidelibꝰ dict nuper Dom Regis J. N. R. S. &c. direct fuit p quam quidem Commissionem dictꝰ nuper Dom Rex perpendens debitam executionem tam Statut tangen ordines pro decoctoribꝰ (Anglice Bankrupts) in Parliamento incept tent apud Westm p̄d scdō die Aprilis Anno Regni p̄charissime Sororis p̄dcī nuper Dom Regis Dne Elizabethe nuper Regine Anglie 13 edit & provis quam etiam Statut edit in Parliamento incept & tent apud Westm p̄d 19 die Marcij Anno Regni Dom Jacobi nuper Regis Anglie primo Scotie 37 Intitulat Actus p meliori relevamine Creditorum versus tales qui deven decoctores dedit plenam potestatem & authoritatem ijsdem quinq Commissionar quatuor vel trib eoꝝ quorum p̄d' J. N. vel p̄d' W. R. unus esse voluit juxta eadem Statut & utrumq eorum non solum concernen p̄d' decoctorem corpus ejus terras liberas (Anglice Freehold) & custumat (Anglice Copyhold) bona debita & ali

Commission.

quecun

quecunq; ſed eciam concernen omnes alias plonas que p concelamentum clameum vel alteri offenderent tangen ꝑmiſs vel aliquam partem inde contra intenconem & ꝓpoſic ꝑdictoꝝ Statutorum vel alteri⁹ eoꝝm ad faciend' & exequend' omnes & quaſlibet rem & res qualcunq; tam erga & p ſatisfactione & ſolucone ꝑdictoꝝm Creditoꝝm quam erga & p omnib⁹ alijs intentionib⁹ & pꝛopoſitis ſecundum oꝛdinationem & pꝛoviſionem eoꝝndem Statutoꝝm vel alterius eoꝝm p quam quidem Commiſſionem dictus nuper Dominus Rex voluit & dedit in mandatis ꝑdictis Commiſſionar quatuoꝝ vel trib⁹ eoꝝm quoꝝm ꝑd' I. N. & W. R. unum eſſe voluit ad ꝓcedend' ad executionem & accomplemene ꝑdicc Commiſſionis ſecundum veram intentionem & pꝛopoſic eoꝝndem Statutoꝝm & alterius eoꝝ cum omni diligentia & effectu ſecundum ſpecialem fiduciam dicti nuper Dom̃ Regis in ijſdem Commiſſionar repoſic pꝛout p eandem Commiſſionem plenius apparet Virtute cujus quidem Commiſſionis ac vigoꝛe Statutoꝝm ꝑdictoꝝ ꝑd' I. N. &c. tres Commiſſionarij ꝑd' poſtea ſcil⁹ 9 die Nov. Anno Regni nuper Regis Caroli 17 apud Civitat Exon ꝑd' in debita juris ſoꝛma adjudicaverunt & declaraverunt ipſum R. eſſe decoctoꝛem infra Statut ꝑd' Et

Quorum.

Commiſſioners adjudge him a Bankrupt.

Assign the Debts.

Et adtunc & ibidem concesserunt assignaverunt & posuerunt p̄dictam summam xx l. in Articulis p̄dictis superius mentonat fore solvend' p̄fat R. p p̄d' H. inter alia p̄fat M. tunc un̄ Creditorum p̄d' R. existen̄ scdm̄ formam Statut p̄d' Et idem H. ulterius dicit quod ipse idem H. omnes alias conventones in Articulis p̄dict mentonat ex parte ipsius H. pformand' & custodiend' a tempore confectionis scripti obligatorij & Articulorum p̄dictorum hucusq; bene & fidelit pimplevit & custodivit scdm̄ formam & effectum scripti obligatorij Et Articulorum p̄dictorum Et hoc, &c. unde, &c. Cum hoc qd' idem H. verificare vult quod p̄d. P. W. adhuc superstes & in plena vita existit videlt apud Com̄ Exon̄ pd', &c.

Averment.

Scire

Scire Fac' pro Creditoribus sur Stat' de Bankrupts sur Judgment recuper' per le Bankrupt envers Executrix.

CArolus, &c. Vic Kanc salutem Cum T. S. alias scilt Termino Scī Mich Año Reg nostri scdō coram R. H. Mil F. H. Mil. G. C. Mil & H. Y. Mil tunc Justiciarijs nostris de Banco apud Westm p Judiciū ejusdem Curie recuperass versus A. B. Vid p nomen A. B. de C. in Com p̄d Executricis Testamenti R. B. Mil nuper, &c. tam quoddam debitum 400 l. quam 50 s. que eid T. S. in ead Curia nostra adjudicat fuer pro damnis suis que huit occasione detentionis debiti illius si ead A. tanta Bona & Catalla que fuer p̄d R. tempore mortis sue in Manib⁹ suis Administrand habuisset & si non huisset tunc damna p̄dca de Bonis & Catallis p̄d A. proprijs levand unde convicc fuit prout p record & process inde in ead Curia nostra residen liquet manifeste Cumq superinde postea scilt Termino Scī M. Anno Regni nostri quarto in p̄dicc Curia nostra de Banco p tunc Justiciarios nostros ibid conc fuisse quod p̄d T. S. heret executionem versus p̄fat A. de debo & damn p̄dicc de Bonis & Catallis p̄d in forma p̄dicc levand p

Judgment.

Executio.

ipsius A. defalt prout p record Et p-
cess in ead Curia nostra residen siliter
liquet manifeste Cumq; etiam pd T.
S. p citiore executione judicij pd hend
in pdict Termino Sci M. Anno quar-
to supradict scilt 9 die Octob isto eod
Termino psecut fuiss & impetrasset
extra pd Curiam nostram de B. pd
apud Westm pd quoddam breve no-
Fi. Fa. strum de Fi. Fa. tunc Vic K. direct p
quod quidem bre nos precepimus quod
ipse de Bonis & Catallis que fuer pd
R. B. &c. in manib' pfat A. B. &c.
fieri faceret tam pd debitum 400 l. (ut
in Fi. Fa. usq; unde convict' fuit) Ad
quem diem coram eisdem tunc Justi-
ciarijs apud Westm venit pd T. S. p
Retorn'. J. H. tunc Attornat suum Et tunc
Vic (videlt) C. C. Mil tunc mand
Justiciarijs nostris apud Westm pd
qd pd A. nulla huit Bona seu Catalla
in Balliva sua que fuer pd R. tempo-
re mortis sue in manibus suis Admi-
nistr unde debitum & damna pdca
sive aliquam inde pcel ullo modo fieri
facere potuit Et qd pd A. nulla huit
Bona seu Catalla sua ppria in Ballia
sua unde damna pd seu aliquam inde
pcell fieri facere potuit Super quo
Testatum fuit in ead Curia nostra ex
pte ipsius T. S. quod pd A. satis ha-
buit de Bonis & Catallis que fuer pd
R. tempore mortis sue in manib' ipsi'
A. Administrand infra libertat quinq;
por-

poꝛtuum unde debitum & damna ꝑdca fieri & levare potuit ſuper quo ꝑd̄ T. S. ꝑdcō Termino Scꝯ M. ſcilt 6 die N. Anno quarto ſupꝛadict ꝓſecue fuit extra ꝑdcam Curiam noſtram de Banco ꝑd̄ quoddam bꝛe noſtrum de Teſtat' Fi. Fa. tunc Conſtabulario (ut ſupra uſq; direct') ꝑ quod quidem bꝛeve nos ꝑfat Conſtabulario, &c. ꝑcepim⁹ quod ipſe de Bonis & Catallis que fuer̄ ꝑfat R. B. nuper dicr, &c. in manib⁹ ꝑfat A. ꝑ nomen, &c. Executricis Teſtamenti ꝑfat R. exiſtēn infra libertates quinq; poꝛtuum fieri facerent tam ꝑd̄ dibitum 400 l. (ut in communi Fi. Fa. uſq; unde convict' fuit) Quod quidem bꝛeve poſtea & ante retoꝛn bꝛevis illius ſcilt 10 die ꝑd̄ Menſis Novembꝛis Anno Regni noſtri quarto ꝑnobili Theophilo Comiti Suff. tunc & adhuc Conſtabulario ꝑd̄ Caſtri Dover̄ ac cuſtoꝺ quinq; poꝛtuum ꝑd̄ & membꝛoꝛum eoꝛundem in foꝛma juris exequend̄ deliberat fuiſſet Ad quem diem ſcilt a die Scꝯ Martini, &c. coꝛam iſdem tunc Juſticiarijs noſtris apud Weſtm̄ ꝑd̄ venit ꝑd̄ T. S. ꝑ Attoꝛnat ſuum ꝑdcum Idemq; T. Comes S. tunc Juſticiarijs noſtris ꝑdict apud Weſtm̄ ꝑd̄ ad diem iſt mand quod ꝑd̄ A. B. nulla huit Bona ſeu Catalla que fuer̄ ꝑd̄ R. B. tempoꝛe moꝛtis (ut ſupra uſq; facere potuit) quodq; eaꝺ A. ante adventum bꝛevis iſtius ſibi direct

Teſtatum Fi. Fa. al' cinq; Port'

Retorn del Conſtable de *Dover* Caſtle.

quedam

quedam Bona & Catalla que fuer̄ p̄d̄ R. tempore mortis sue ad valentiam 100 l. devastasset Et in usum suum ꝓprium convertisset Et ulterius Justiciarijs nostris certificat quod p̄d̄ A. nulla huit Bona seu Catalla sua ꝓpria unde damna p̄d̄ seu aliquam inde pcell̄ fieri facere potuit prout p breve & retorn̄ inde in dicta Curia nostra de Banco p̄d̄ residen̄ liquet manifeste Cumq; p̄d̄ T. S. iij die Maij Anno Regni nostri sexto indebitat̄ fuisset cuidam W. N. Gen̄ in summa 88 l. & 7 s. solvend̄ eid̄ W. cum inde requisitus fuisset Ac etiam cum p̄d̄ T. S. adtunc indebitat̄ fuisset cuidam W. M. Gen̄ in summa 34 l. solvend̄ eid̄ W. M. cum inde requisitus fuisset Ac eciam cum p̄d̄ T. S. p̄d̄ iij die Maij Anno Regni nostri sexto supradict̄ indebit̄ fuisset cuidam R. S. in summa 45 l. solvend̄ eid' R. S. sil̄iter cum inde requisit⁹ fuisset eisdem W. N. W. M. & R. S. tunc existen̄ subditis natis Regni nostri Anglie Ac eciam cum p̄d' T. S. adtunc indebitat̄ fuisset diversis alijs ꝑsonis Creditorib⁹ ipsius T. sil̄iter existen̄ subditis natis Regni nostri Anglie in diversis alijs denariorum summis in toto se attingen̄ and 5013 l. & 12 s. Legalis Monete Anglie Ipsoq; T. S. sic indebitat̄ existen̄ ac p̄dict̄ 100 l. ꝓ valore Bonorum & Catallorum que fuer̄

Devastavit.

fuer ꝑfat K. B. tempore mortis ſue p ꝓd' A. ut ꝑtertur debaſtat dicto T. S. minime ſolut ſive levat exiſtent Idem T. S. poſtea ſcilt ij die Junij Anno Regni noſtri ſexto ſupradicto apud Maidſtone ꝑfat W. N. W. M. & K. S. ac ceteris Creditoribꝰ ꝓdcꝰ T. S. de debitis ſuis ꝓd' minime ſolut exiſtent incepiſſet cuſtodire Domum ſuam ibid' exiſtent ad intentionem defraudare Creditores ſuos ꝓdictos de debitis ſuis eis ut ꝑtertur p ꝓd' T. S. debit Et ſuperinde eod' ij die Junij Anno ſexto ſupradicto apud M. ꝓd' manifeſte devenit Decoctor (Anglice a Bankrupt) Qui quidem T. S. ꝓdcō tempore quo ipſe devenit Decoctor fuit & adhuc eſt ſubditꝰ natus hujus Regni A. apud M. ꝓd' & adtunc & p nonnullos Annos ante tunc apud M. ꝓd' uſus fuit Arte ſeu Miſterio Braſiatoris & querebat facultatem ſuam Vivendi p viam Emendi & Vendendi Ac cum poſtea ſcilt xjx die Aug Anno Regni noſtri ſeptimo apud M. ꝓd' ad Petitionem ꝓdictoꝝ W. M. W. N. & K. S. & aliorꝝ Creditorꝝ ꝓd' T. S. Thome Dnō Coventry Dnō Cuſtod' Magni Sigilli Anglie exhibit & fact pro remedijs ſuis verſus ꝑfat J. S. tunc exiſtent Decoctorem in ea pte hend' eiſdem W. N. W. P. & K. S. tunc minime ſolut aut ſatisfact exiſtent quedam Commiſſio noſtra ſuper Statut contra

Act del Bankrupcy.

Petitio.

Commiſſio

De-

Decoctores edic & pvisis sub Magno Sigillo nostro Anglie sigillat in Curia nostra p̄d' coram p̄fat Justiciarijs nostris apud Westm de B. p̄d' p̄fat gerend dat apud C. in Com p̄d' Midd' p̄d' xix die Aug Anno septimo supradicte quibusdam E. D. Mil P. P. Armig T. B. Arm W. H. Gen & A. P. Gen spiat Commissionar nostris & dedimus plenam potestatem & authoritat eisdem Commissionarijs quatuor vel trib⁹ eorum quorum p̄d' P. P. aut p̄d' T. B. unum esse volumus juxta seperal Statut de Decoctorib⁹ in hujusmodi casu edic & pvis in dicta Commissione mentionat & quodlibet vel ullum corp̄ non solum concernen corpus ipsius T. S. Decoctoris Terras Tenementa libera & customaria Bona Debita & alias Res quascunq verum etiam concernen omnes alias psonas quascunq que p concealamenta vel aliter offenderent tangen p̄dca p̄missa vel aliquam ptem inde contra veram intentionem & pposic p̄dictor̄ Statutor̄ & eor̄ cujuslibet vel alicujus eorum ad faciend' & exigend' omnes & quaslibet rem & res quascunq tam erga & p solucone & satisfactione p̄dictor̄ Creditorum quam erga & pro omnibus alijs intentionib⁹ & ppositis secd̄ pvisionem & ordinationem eorundem Statutorum p quam quidem Commissionen nos volumus

mus & dedimus in mandatis qd' ꝑdict Commiſſionarij vel quatuoꝛ vel treſ eoꝝ quoꝛum ꝑd' P. P. aut ꝑd' T. B. unum eſſe volumus ad ꝓcedend' ad executionem & perimpletion Commiſſionis ꝑd' cum omni diligentia & effectu ſcdm fiduciam noſtram in eis repoſit put ꝑ eandem Commiſſionem pleniuſ liquet & apparet Virtute cujus quidem Commiſſionis ac vigoꝛe Statutoꝛum ꝑdictoꝝ ꝑdict P. P. T. B. W. H. & A. P. jurta Officia ſua obligat cum omni diligentia ad optimam Scientiam Artem & Induſtriam eoꝛum Commiſſion ꝑd' exequi pfoꝛmare & perimplere diverſis ſeperat tempoꝛib' in ead' ꝓcedebant ac Teſtes ead' tangen diligent & intente examinaver ac ꝑ ealdem examinationes iij die M. Anno Regni noſtri ſeptimo apud M. ꝑd' inveneꝛ ꝑd' T. S. foꝛe Decoctoꝛem infra ꝓpoſit & intentionem Statut ꝑd' & ſic foꝛe & devenire ratione evitationis & abſentionis ipſius T. S. ab Arreſt Creditoꝛum ſuoꝛum & cuſtoditionis Domus ipſius T. ob metu Arreſtacionis ad ſecta diverſoꝛum Creditoꝛum ſuoꝛum ꝑ veris & juſtis debitis ꝑ ipſum debit Ac etiam ꝓꝛo eo qd' ꝑdict T. S. occulte & ſecrete a Domo ſua Mantionali deceſſit ꝑ ſecret fugationem in ptes ultra Mare & abſentationem ſui ipſius extra hoc Regnum ꝑ debitis ipſius T. S. ꝑ ipſum tunc

Quorum.

Abſenting.

&

verment. & p̄d' iij die M. Anno septimo sup̄dict dibic Ipsi p̄d' T. B. W. H. & A. P. virtute Statut & Commission p̄d' de & p̄o Causis sup̄adictis p̄d' iij Die M. Anno septimo sup̄adict apud M. p̄d' declaraverunt & adjudicaverunt p̄d' T. S. fore Decoctorem a p̄imo die J. Anno Dom 1630. sup̄adict & sic fuisse & semper ab eod' p̄imo die J. continuasse etiam ubi p examinationis apparuisse p̄d' T. B. W. H. & A. P. Commissar p̄d' qd' p̄d' T. ante p̄dict diem J. & continue postea fuit p̄d' iij die M. Anno septimo sup̄adict extitit vere indebitat p̄d' seperalib⁹ p̄sonis & aliqui querebant relevacionem p Commission p̄d' & contribuere erga custagia p̄secutionis & executionis ejusdem Commissionis in seperal denariorum summis in toto se attinged ad 5013 l. & 12 s. ultra 40 l. expendit p easdem p̄sonas in custag circa p̄secution & execution Commissionis p̄d' Ac etiam ubi p examinationem p̄d' apparebat p̄d' T. B. W. H. & A. P. quod p̄d' T. S. p̄dict p̄imo die Junij Anno Dom 1630. sup̄adict & diu ante & postea fuit & p̄d' iij die M. Anno septimo sup̄adict exist seisit⁹ in Dominico suo de Statu Hereditario de & in uno Messuagio, &c. Ac etiam ubi apparebat p̄fat T. B. W. H. & A. P. Commissionarijs p̄d' qd' p̄d' summa 100 l. p valore Bonorum & Catallorum p̄d'

p

p p̄fat A. sic ut p̄fertur devastat tunc debit fuit p̄fat T. S. a p̄fat A. B. p̄dcī T. B. W. H. & A. P. pro dand' satisfactionem p̄dictis seperalib⁹ personis Creditorib⁹ p̄fat T. S. p debitis suis p̄dictis & p ulteriori executione Statut & Commission p̄d' p & in consideratione summe 360 l. Legalis Monete Anglie ipsis p̄fat T. B. W. H. & A. P. p p̄fat T. G. solut iij die Maij Anno Regni nostri septimo supradict apud M. p̄d' inter ipsos T. B. W. H. & A. P. p nomina, &c. ex una pte & p̄fat T. G. p nomen, &c. ex altera parte factam cujus alteram partem sigillis p̄d' T. B. W. H. & A. P. signat & in Cancellaria nostra infra sex Menses tunc postea de recordo irrotulat geren dat eisdem die & Anno idem T. G. hic in Curia nostra p̄d' coram Justiciarijs p̄d' p̄fert dederunt & concesserunt p̄fat T. G. totum Statum jus titulum & interesse, &c. Ac eciam p̄dcī T. B. W. H. & A. P. Commissionarij p̄d' p Indentur̄ suam p̄d' assignaverunt & transtulerunt p̄fat T. G. Executorib⁹ & Administratorib⁹ suis p̄d' debitum sive summam 100 l. p̄d' T. S. p p̄fat A. B. ut p̄fertur invent esse debit ac omne legale ꝓficun (Anglice Interest Mony) & alia beneficium & ꝓficuum ꝓvenien vel surgen ex inde aut superinde debit ꝓut p Indenturam p̄d' inter alia plenius liquet

Assignment Enrolled.

&

Devastatio. & apparet Et idem T.G. in facto dicit qd' pd' debitum sive sumam 100 l. per Commissionarios pdice ut pfertur invene esse debit & insolut p pfat A. B. Vid' & p eosdem Commissionarios pdict T. G. ut pfertur assignat & pd' 100 l. p valore Bonor & Catallor pd' R. B. tempore mortis sue que pfat Constabular Castri Dover & Custos quinq; Portuum pd' ut pfertur retornavit super pdcō brevi de Fi. Fac. quod pdict A. B. ut pfert' sunt unum & idem debitum & non aliud neq; divers quodq; idem debitum sive sumā 100 l. adhuc totaliter insolut existit & assignat fuit in forma pdict pdcō T. G. Et ulteri' quod pd' Dna Bingly Vid' in

Averment. pd' Indentura Assignacōnis mentionat & pd' A. B. in pdcō brevi de testat Fi. Fa. & retorn inde nominat modo defendens sunt una & ead' plona & non alia nec diversa put ex insinuacone pd' T. G. assignat debit pd' T. S. Decocto-ris secdm formam Statut de Decocto-rit' (Anglice Bankrupts) in ea parte pv s accepim' Et quia volum', &c. p pbos, &c. si quid, &c. quare pd' T.G. executionem versus eam de pd' 100 l. p valore Bonor & Cattalor que fuere R.B. tempore mortis sue p pd' A. ut pfertur devastat pfat T.G. p pd' Commissionarios in forma pd' assignt here non debeat juxta formam Leges & Stat pdict si, &c. Et habeas, &c.

An

An Indenture of Aſſignment by the Commiſſioners of Bankrupts.

THIS Indenture made, *&c.* in the Third Year of the Reign of our Sovereign Lord and Lady *William* and *Mary*, by the Grace of God of *England*, *Scotland*, *France* and *Ireland* King and Queen, Defenders of the Faith, *&c.* Between A. B. Eſq; C. D. Gent. and E. F. Gent. of the one part, and T. R. of *London* Stationer, of the other part. **Whereas** the King and Queens Majeſties Commiſſion, under the Great Seal of *England*, grounded upon the ſeveral Statutes made concerning Bankrupts, bearing date at *Weſtminſter* the, *&c.* day of, *&c.* laſt paſt, hath been awarded againſt *Elizabeth* K. of, *&c.* in the County of, *&c.* Chapwoman, and directed to the ſaid A. B. C. D. E. F. together with W. B. Eſq; and J. G. Gent. thereby giving full Power and Authority unto the ſaid Commiſſioners, four or three of them, whereof the ſaid A. B. or W. B. to be one to execute the ſame; As by the ſaid Commiſſion, relation being thereunto had, the ſame doth, and may more fully and at large appear. And **Whereas** the ſaid Commiſſioners, Parties to theſe Preſents, or the major part of the Commiſſioners by the ſaid Commiſſion authoriſed, having begun to put the ſaid recited Commiſſion

Commiſſion in Execution, upon due examination of Witneſſes, and other good proof upon Oath before them taken, do find that the ſaid E. K. hath for the ſpace of ſix years laſt paſt, or thereabouts, uſed and exerciſed the Trade and Profeſſion of a Milliner or Country Mercer, in Buying and Selling of Silks, Stuffs and other Wares and Commodities belonging to her ſaid Trade, at her Houſe and Shop in C. aforeſaid; and ſought and endeavoured to get her Living by Buying and Selling, and that ſhe the ſaid E. K. ſo ſeeking and endeavouring to get her living by Buying and Selling, during the time of her ſaid Trading and Dealing, did become juſtly and truly indebted, and ſtill doth owe and ſtand indebted unto the above named T. R. and others her Creditors in the ſum of Three Hundred Pounds of Lawful Mony of *England*, and upwards; and being ſo indebted, ſhe the ſaid E. K. did in the judgment of the ſaid Commiſſioners, Parties to theſe Preſents become Bankrupt to all intents and purpoſes, within the Compaſs, true intent and meaning of the ſeveral Statutes made concerning Bankrupts, or within ſome, or one of them, before the date and ſuing forth the ſaid Commiſſion. And **Whereas** alſo the ſaid Commiſſioners, Parties to theſe Preſents, or the major part of the Commiſſioners, by the ſaid Commiſſion authoriſed, having alſo found out and diſcovered, that the ſaid E. K.

Become Bankrupt.

E. K. at the time, and ſince ſhe became a Bankrupt, as aforeſaid, was poſſeſſed of, and intereſted in divers Goods, Wares and Merchandiſes, Houſhold-ſtuff and Implements of Houſhold, Bedding, Linnen, Braſs, Pewter and other Commodities; and that other Goods of hers were removed and come to the Hands, Cuſtody and Poſſeſſion of divers and ſundry Perſons, ſince the time as ſhe the ſaid E. K. became a Bankrupt, as aforeſaid, and ſuch Goods being returned, and the ſame, and all other the Goods, Wares and Merchandizes Houſhold-ſtuff and Implements of Houſhold, and other Commodities remaining in the Houſe and Shop of the ſaid E. K. were ſeiſed by vertue of the Commiſſioners Warrant, and the ſame being ſo ſeiſed, the Commiſſioners, Parties to theſe Preſents, or the major part of the Commiſſioners, by the ſaid Commiſſion authoriſed, cauſed ſuch Goods, Wares, Merchandizes and Commodities to be inventoried and duly appraiſed by honeſt Men of Skill and Judgment, who did value and appriſe ſuch Goods, Wares and Merchandizes, Huſhold-ſtuff and Commodities, at the full values as by the particular Inventory and Appraiſment ſent unto the Commiſſioners may appear. The value whereof in the total amounted unto the ſum of 248 *l.* 17 *s.* of Lawful Mony of *England*. And Whereas the ſaid T. K.

Goods.

Seiſed.

Appraiſed.

hath ſince ſold and diſpoſed of all the before-mentioned Goods, Wares and Commodities, at the full values mentioned and expreſſed in ſuch Appraiſment, unto ſeveral perſons, ſome whereof are paid for, and others as yet unpaid for, and owing upon Securities. And they the ſaid Commiſſioners, Parties to theſe Preſents, do further find, that there are divers Debts, ſum and ſums of Mony due and owing unto the ſaid E. K. and her Eſtate by, and from divers and ſundry perſons, the particulars of which ſaid Debts, and the ſeveral and reſpective perſons names that do ſeverally and reſpectively owe the ſame, are mentioned, ſet down and expreſſed in a Schedule, indented to theſe Preſents annexed. Now this Indenture witneſſeth, That the ſaid Commiſſioners, Parties to theſe Preſents, by form and vertue of the ſaid Commiſſion, and the ſeveral Acts of Parliament therein mentioned and expreſſed, and alſo for, and in conſideration of the Covenants herein, after on the part and behalf of the ſaid T. R. his Heirs Executors and Adminiſtrators covenanted to be performed and done, **Have** Ordered, Aſſigned and ſet over, and by theſe Preſents do as much as in them the ſaid Commiſſioners lieth, and they lawfully may, Order, Aſſign and ſet over unto the ſaid T. R. the before-mentioned ſum of 248 *l.* 17 *s.* and every part and parcel there-

Bankrupts Debts.

The Aſſignment.

thereof, being the ſame Monies raiſed and advanced by ſale of the afore-mentioned Goods, Wares and Merchandizes ſo belonging and appertaining to the ſaid E. K. and her Eſtate, as before is expreſſed, and alſo all the Debts, ſum and ſums of Mony mentioned and expreſſed in the ſaid Schedule annexed; and all other Debts due and owing unto the ſaid E. K. by, and from the perſons therein named as Debtors. To have and to hold the ſaid ſum of 248 *l.* 17 *s.* and every part thereof; and alſo the ſaid Debts, ſum and ſums of Mony ſo mentioned, ſet down and expreſſed in the ſaid Schedule annexed, and all other Debts, ſum and ſums of Mony whaſoever, due and owing to the ſaid E. K. and her ſaid Eſtate, by, and from the reſpective perſons therein named and mentioned as Debtors unto the ſaid T. R. his Executors, Adminiſtrators and Aſſigns for evermore. In truſt nevertheleſs, to, and for the uſe and behoof herein after mentioned and expreſſed (that is to ſay) in truſt to, and for the uſe, benefit, behoof and advantage of the ſaid T. R. and all other the Creditors of the ſaid E. K. who have already ſought, or ſhall hereafter in due time come in as Creditors into the ſaid Commiſſion, and ſeek relief thereby, and contribute to the Charges therof, according to the Direction and Limita-

tion of the ſeveral Statutes in that behalf made and provided, and to, and for none other uſe, intent or purpoſe whatſoever. **And** the ſaid T. R. for himſelf, his Heirs, Executors, Adminiſtrators and Aſſigns, doth Covenant, Promiſe, Grant and Agree to, and with the ſaid Commiſſioners, Parties to theſe Preſents, and to, and with every and each of them, in Manner and Form following (that is to ſay) that he the ſaid T. R. his Heirs, Executors or Adminiſtrators, or ſome, or one of them, ſhall and will with all convenient ſpeed, and by all lawful ways and means ſue for, and recover the Debts mentioned in the ſaid Schedule hereunto annexed; and from, and after recovery and receit thereof ſhall, and will upon reaſonable requeſt, or notice in writing to him for that purpoſe made, or given by the Commiſſioners, Parties to theſe Preſents, or the major part of the Commiſſioners, by the ſaid Commiſſion authoriſed, make and give a juſt, true and perfect Account unto the ſaid Commiſſioners of the ſaid ſum of 248 *l.* 17 *s.* before-mentioned, as ſoon as he ſhall have received the ſame, and alſo of all ſuch ſums of Mony as he the ſaid T. R. ſhall have had raiſed or received out of the Debts hereby aſſigned by force and vertue of theſe Preſents, and ſhall pay over the ſaid ſum of 248 *l.* 17 *s.* and ſuch other Monies as he

Covenant to ſue for the Debts.

And make Account.

he ſhall have received on Account of the Debts, ſo by theſe Preſents Aſſigned unto the ſaid Commiſſioners, Parties to theſe Preſents, or the major part of the Commiſſioners, by the ſaid Commiſſion authoriſed, or diſpoſe thereof as they ſhall Order, Direct and Appoint in ſome convenient time from, and after he the ſaid T. R. his Executors, Adminiſtrators or Aſſigns ſhall have had, and received the ſame, or any part thereof, to the end the ſaid Commiſſioners may Order, Diſtribute, Divide and Diſpoſe thereof for, and towards the Payment and Satisfaction of the Debts due and owing by the ſaid E. K. to ſuch of her Creditors, who have already ſought, or ſhall hereafter come in and ſeek relief by vertue of the ſaid Commiſſion, and contribute towards the Charges thereof, as aforeſaid. **And moreover**, That the ſaid T. R. his Heirs, Executors and Adminiſtrators ſhall and will from time to time, and at all times hereafter, well and ſufficiently Save, Defend, keep Harmleſs and Indempnified the ſaid Commiſſioners, Parties to theſe Preſents, and every and each of them, their, and every of their Executors and Adminiſtrators, and his and their Bodies, Lands and Tenements, Goods and Chattels, of and from all manner of Actions, Coſts, Suits, Arreſts, Loſſes, Damages and Expences whatſoever, which they or any of them ſhall,

Covenant to ſave the Commiſſioners Harmleſs.

or may ſuffer, ſuſtain, or be put unto, for, or by reaſon of this preſent Deed of Aſſignment, or any other matter or thing whatſoever, lawfully done or executed by vertue of the ſaid Commiſſion, or their, or any of their lawful intermedlings or dealings in any of the Eſtate of the ſaid E. K. by Force, Vertue or Colour thereof. **In Witneſs,** *&c.*

The Schedule whereunto the Deed or Indenture annexed, refer.

Debts due and owing to the ſaid E. K. and her Eſtate.

Impzimis, Due and owing from, *&c.*

Item.

Ano-

Another Form of an Aſſignment.

THIS Indenture made, *&c.* Between A. B. of, *&c.* Eſq; C. D. of, *&c.* and E. F. of, *&c.* of the one part, and J. S. of, *&c.* of the other part. **Whereas** the King and Queens Commiſſion, under the Great Seal of *England*, bearing date at *Weſtminſter* the day of laſt paſt, grounded upon ſeveral Statutes made concerning Bankrupts, hath been awarded againſt P. R. of, *&c.* directed to the ſaid A. B. C. D. and E. F. and unto G. H. and J. K. Gent. thereby giving full Power and Authority unto the ſaid Commiſſioners, four or three of them, whereof the ſaid A. B. and G. H. to be one to execute the ſame. As by the ſaid Commiſſion, relation being thereunto had, it may more at large appear. **And whereas** the ſaid Commiſſioners, or the major part of them, having begun to put the ſaid Commiſſion in execution, upon due examination of Witneſſes, and other good proof upon Oath before them, or the major part of them, according to the Form and Preſcipt of the ſaid Commiſſion, and the ſaid Statutes taken, and otherwiſe, the ſaid Commiſſioners, Parties to theſe Preſents, have found, and do find that the ſaid P. R. did for the ſpace of ſeven

ſeven years and upwards together, laſt paſt, before the ſuing forth the ſaid Commiſſion, uſe and exerciſe the Trade of——*&c.* at his or (*her*) Shop in W. aforeſaid, in the ſaid County of, *&c.* and in particular in that his Trade did buy and ſell Iron Wares, and ſeveral other ſorts of Wares and Merchandizes, and other Commodities relating to that Trade whereby he did ſeek his Trade of Living (that is to ſay) by Buying and Selling; and that he the ſaid P. R. in the time of ſuch his Trading, and by reaſon thereof did become indebted unto the ſaid J. S. and other his Creditors, in the ſum of One Hundred Pounds and upwards, and for which the ſaid J. S. on the behalf of himſelf and other Creditors of the ſaid P. R. hath prayed the aid and relief of the ſaid Commiſſion and Statutes before the ſaid Commiſſioners, Parties to this Indenture, the ſaid ſum of One Hundred Pounds and upwards, being yet unpaid, and owing to the ſaid J. S. *&c.* And the ſaid Commiſſioners have alſo found, and do find, that the ſaid P. R. being ſo indebted, as aforeſaid, did next before the date and ſuing forth the ſaid Commiſſion (in the judgment of the ſaid Commiſſioners, Parties to theſe Preſents) become a Bankrupt to all intents and purpoſes, within the Compaſs, true Intent and meaning of the ſeveral Statutes made concerning Bankrupts, or

ſome

ſome, or one of them. **And whereas** the ſaid Commiſſioners, Parties to theſe Preſents, in further execution of the ſaid Commiſſion, upon like due examination of Witneſſes, and other good proof upon Oath before them, or the major part of the Commiſſioners before named, have found, and do find, or it otherwiſe appeareth to them, that ſince ſuch time that the ſaid P. R. became a Bankrupt, as aforeſaid, he the ſaid P. R. was lawfully poſſeſt of and intereſted in a certain Leaſe, and Goods, Wares, *&c.* in the Schedule, *&c.* Now this Indenture Witneſſeth, that the ſaid Commiſſioners, Parties to theſe Preſents, being the major part of the Commiſſioners, in the ſaid Commiſſion named, in further execution of the ſaid Commiſſion, and of the Statutes therein mentioned, and by Force and Vertue of the ſame, and of the Authority to them, or the major part of them given thereby; in conſideration, *&c.* Have as much as in them lieth, Bargained, Sold, Aſſigned, Tranſferred and Set over: And by theſe Preſents (as much as in them lieth) do Bargain, Sell, Aſſign, Transfer and Set over unto the ſaid J. S. his Executors, Adminiſtrators and Aſſigns, all and ſingular the ſaid afore-mentioned term of Years, *&c.* **To have and to hold**, ask, demand, ſue for, recover and receive all, and ſingular the ſaid Leaſe and

Term

Here ſhould be two *Habendums*, one of the Term and the other of Goods, *&c.*

Term of Years, Goods, Wares, *&c.* mentioned and expreſſed in a Schedule hereof hereunto annexed, and all, and every other Debt and Debts, Sum and Sums of Mony whatſoever, by theſe Preſents Ordered, Aſſigned and Set over, or in any wiſe due, or owing, or belonging to the ſaid P. R. or his Eſtate, by or from all, or any the perſons named as Debtors in the ſame Schedule, or otherwiſe unto him the ſaid J. S. his Executors, Adminiſtrators and Aſſigns, Upon Truſt nevertheleſs, and to and for the intents and purpoſes following (that is to ſay) to, and for the uſe, behoof, benefit and advantage of them the ſaid J. S. *&c.* and all ſuch other Creditors of the ſaid P. R. as have already ſought, or ſhall hereafter in due time come in and ſeek reliefe by vertue of the ſaid Commiſſion, and contribute towards the Charge thereof, according to the direction and limitations of the ſaid Statutes, as to ſo much of the ſaid Eſtate, both Real and Perſonal of the ſaid P. R. and other the Premiſſes, Ordered, Directed, Bargained, Sold, Aſſigned and Set over to the ſaid J. S. as aforeſaid; and of the Monies which ſhall, or may be had or raiſed by, or for the ſame, as the Debts of the ſaid Creditors do, and ſhall amount unto; And as to the reſidue and ſurpluſage of the ſaid Eſtate, if any ſuch ſhall be, the ſame ſhall be in truſt for

for the ſaid P. R. his Executors and Aſſigns, according to the ſaid Statutes, and the true intent and meaning thereof, and to, and for none other uſe, intent or purpoſe whatſoever. And to, and with the ſaid Commiſſioners, Parties to theſe Indentures, their Executors, Adminiſtrators and Aſſigns, the ſaid P. R. for himſelf, his Executors and Adminiſtrators, doth Covenant, Promiſe and Grant in Manner and Form following (that is to ſay) that he ſhall, and will from time to time, and at all times hereafter, with all convenient ſpeed uſe his beſt means and endeavour by Suit in Law or otherwiſe to ſue for, recover, receive and get into his and their poſſeſſion, all, and ſingular the aforeſaid Goods, Wares, Merchandizes, Houſhold-ſtuff, Debts and Sums of Mony, by theſe Preſents Aſſigned and Set over, as aforeſaid, and after Poſſeſſion had and obtained of the ſaid Goods, Wares, Merchandizes, Houſhold-ſtuff, Debt, Sum and Sums of Mony, and other things, or any part thereof, ſhall, and will with like convenient ſpeed make Sale and Diſpoſition thereof to, and for the moſt and beſt value and advantage he and they may or can *bona fide*. And further, that he, his Executors and Adminiſtrators ſhall, and will from time to time, and at all times hereafter upon any reaſonable requeſt and notice, account to, and with the ſaid

Covenant to get in the Debts.

To Account

ſaid Commiſſioners, Parties to theſe Preſents, or any of them, their, or any of their Executors or Adminiſtrators, what, and how much Mony, or other ſatisfaction they ſhall then have received, raiſed or recovered by Force, Vertue or means of this preſent Deed or otherwiſe, out of the Eſtate of the ſaid P. R. and ſuch Mony or other ſatisfaction as upon ſuch Account or Accounts ſhall appear to be ſo had, raiſed, obained or received, ſhall, and will upon like reaſonable requeſt and notice, well and truly pay, or cauſe the ſame to be paid unto them the Commiſſioners, Parties to theſe Preſents, or ſome, or one of them, to the end the ſame may be by them Ordered, Diſpoſed, Diſtributed, Divided and Set over unto them, the afore-named Creditors, and ſuch others of the Creditors of the ſaid P. R. as have alreay ſought relief, or ſhall hereafter in due time come in, and ſeek relief by the ſaid Commiſſion, and contribute towards the Charge thereof, according to the Limitations and Directions of the ſaid Statutes, as aforeſaid. **And to, and with the ſaid Commiſſioners**, Parties to this Indenture, and the ſaid J. S. his Executors and Adminiſtrators, and every one of them, the ſaid R. B. *&c.* (*the Creditors*) do hereby Covenant and grant for themſelves, their Heirs, Executors and Adminiſtrators, that they, and every of them

Covenant from the Creditors.

them from time to time, for ever hereafter, according to, and after the ſhare and proportion of his or their particular Debt or Debts to him or them now due and owing from the ſaid P. R. with, and in reſpect to the ſeveral Debts of all ſuch Creditors as hereafter in due time ſhall come in and ſeek relief by the ſaid Commiſſion, ſhall, and will pay, bear, perform and do his and their ſhare and proportion of all Charges and Expences, Trouble and Travel which already hath been, or hereafter ſhall be meet, requiſite or convenient, or ſhall happen in or for the ſuing forth, proſecuting or executing of the ſaid Commiſſion, or in, or for the maintaining, juſtifying or defending the ſame, or all, or any proceedings which already have been, or hereafter ſhall be thereupon, or for the ſecuring and keeping Harmleſs or Indempnified the ſaid Commiſſioners, Parties to theſe Preſents, and the ſaid J. S. and every, or any of them, or any of their Executors or Adminiſtrators of, and from all Actions, Suits, Arreſts, Trouble, Damages, Charges, Travel and Expences whatſoever which may ariſe, happen or be occaſioned to every or any of them, by reaſon of the ſaid Commiſſion, or the ſuing out, proſecuting or executing thereof, or of any matter or thing already done, or which hereafter ſhall be done in proſecution of the ſaid Commiſſion, or by reaſon

reaſon of this preſent Indenture, or the Truſt, or any other matter or thing therein compriſed, ſpecified or mentioned, or any thing which is, or ſhall be done in purſuance thereof. **In Witneſs**, &c.

Memorandum. It were better to have in this two *Habendum's*, one of the Term, and another of the Goods.

A Deed of Diſtribution from Commiſſioners of Bankrupts to the Creditors.

THIS Indenture made, *&c.* Between J. C. P. B. Eſquires and W. F. Gent. of the one part, G. H. J. K. *&c.* of the other part. **Whereas** the Kings Majeſties Commiſſion under the Great Seal of *England*, grounded upon the ſeveral Statutes made concerning Bankrupts, bearing Date at *Weſtminſter*, &c. hath been awarded againſt the ſaid R. G. directed unto R. A. P. C. Eſquires, the ſaid J. C. P, B. and W. F. Gent. as by the ſaid Commiſſion, whereunto Relation being had, more fully and at large it may and doth appear. And **Whereas** at the Humble Petition of the ſaid H. N. exhibited to the Right Honourable, *George* Lord *Jeoffreys*, Baron of *Wemm*, Lord High Chancellor of *England*, the ſaid Commiſſion was renewed, and the ſaid

The Commiſſion.

ſaid A. B. and C. D. therein named, inſtead of them the ſaid R. A. *&c.* together with them the ſaid J. C. P. B. *&c.* thereby giving full Power and Authority unto them the ſaid A. B. and C. D. *&c.* four or three of them, whereof the ſaid A. B. or C. D. to be one to execute the ſame Commiſſion, as in and by the ſame renewed Commiſſion under the Great Seal of *England*, bearing Date at *Weſtminſter*, &c. whereunto relation being had, more fully at large it may and doth appear. And **Whereas** the ſaid Commiſſioners, Parties to theſe Preſents, having begun to put the ſaid Commiſſions in Execution upon due examination of Witneſſes and other good proof upon Oath before them taken, have found that the ſaid R. G. for the ſpace of, *&c.* paſt before the Date and Suing forth of the ſaid Commiſſions, uſed and exerciſed the Trade or Profeſſion of, *&c.* and did receive and take to Pawn upon Credit, Rings, Plate, Jewels, Houſhold-Goods, Wearing Apparel, and other Goods, and did Buy, Sell and Utter ſeveral, great quantities of the like Goods, and other Wares and Merchandizes, and had and kept an Houſe, Shop and Warehouſe for that intent and purpoſe in, *&c.* in the Pariſh of, *&c.* and did ſeek and endeavour to get his Living by Buying and Selling as other Broakers and Traders uſe to do. And that he the ſaid R. G. ſo ſeeking

and endeavouring to get his Living by Buying and Selling, Trading and Dealing, as aforeſaid is mentioned, did during that time of his ſaid Trading and Dealing become juſtly and truly indebted, and ſtill doth owe and ſtands juſtly and truly indebted unto the above-named A. B. C. D. M. L. and J. B. in the ſum of Fifteen Hundred Pounds of Lawful Mony of *England*, and unto divers other perſons his Creditors above alſo named, divers and ſundry other Sum and Sums of Mony, amounting in the whole to the Sum of, *&c.* of like Lawful Mony, and being ſo indebted, he the ſaid R. G. did in the judgments of the ſaid Commiſſioners, Parties to theſe Preſents, become Bankrupt to all intents and purpoſes, within the Compaſs, True intent and Meaning of the ſeveral Statutes made concerning Bankrupts, or within ſome or one of them, before the date and ſuing forth of the ſaid firſt recited Commiſſion. And Whereas the ſaid Commiſſioners, Parties to theſe Preſents, in further execution upon like due examination of Witneſſes, and other good proof upon Oath before them taken, having alſo found that at ſuch time as he the ſaid R. G. became Bankrupt, as aforeſaid, there were divers Good Wares and Merchandizes, as well of and belonging to him the ſaid R. G. as what were Pawned unto him as Securities for Monies

nies by him lent, and alſo ſeveral Sum and Sums of Ready Monies and other Commodities of and belonging to the ſaid R. G. and his Eſtate in his ſaid late Dwelling-Houſe, ſituate and being in, *&c.* Did by their Deed or Indenture of Aſſignment, under their Hands and Seals, and duly executed, bearing Date, *&c.* for and upon Conſiderations, and to and for the Uſes, Intents and purpoſes therein mentioned, Aſſign and Set Over unto the ſaid T. P. H. N. M. L. and J. B. their Executors, Adminiſtrators and Aſſigns, All and Singular the ſaid Goods, Wares, Merchandizes, Ready Monies and other Commodities, the particulars whereof are mentioned, ſet down and expreſſed in the Schedule or Inventory thereof to the ſaid Deed or Indenture of Aſſignment annexed, as by the ſame Indenture of Aſſignment relation being thereunto had, may more at large appear. And **Whereas** the ſaid Commiſſioners, Parties to theſe Preſents, in further execution of the ſaid Commiſſion, upon ſufficient proof upon Oath of ſeveral Witneſſes, have alſo found, that he the ſaid R. G. at the time he became Bankrupt, as aforeſaid, ſtood juſtly and truly indebted, and ſtill doth owe and ſtandeth juſtly and truly indebted unto the ſaid T. P. in the Sum of, *&c.* Principal Mony, alſo to the ſeveral perſons his Creditors above-named, in ſeveral Sums of Mony,

amounting in the whole to the Sum of, *&c.* of Lawful Mony of *England*, the particulars whereof, together with the ſeveral and reſpective perſons, that as well have ſufficiently proved, as ſuch of them that have not well proved their ſeveral and reſpective Debts (who are not hereby to have or receive any benefit or advantage by this preſent Deed of Dividend, until ſuch time as they ſhall ſo have reſpectively ſufficiently proved their Debts and Demands) are mentioned, ſet down and expreſſed in the Schedule, indented to theſe Preſents annexed. And Whereas the full ſpace of four Months ſince the Date and Suing forth of the ſaid Commiſſions is fully elapſed and expired, and no other Creditors of the ſaid R. G. other than the perſons above-named have as yet come in, and ſought Relief by the ſaid Commiſſions, or paid, or contributed towards the Charges thereof, according to the direction of the ſaid Statutes for Debt or Debts due, or claimed to be due and owing by and from the ſaid R. G. And Whereas the ſaid Aſſignees T. P. H. N. M. L. and J. B. have actually raiſed and received by vertue of the ſaid Aſſignment out of the Goods and other things thereby aſſigned, the Sum of, *&c.* of Lawful Mony of *England*, the particulars whereof, and how the ſame hath been received, are mentioned, ſet

ſet down and expreſſed in the ſaid Schedule indented to theſe Preſents, likewiſe annexed. And **Whereas** the ſaid Creditors above-named parties hereunto, have made already, and by theſe Preſents do make it their Requeſt unto us the ſaid Commiſſioners, Parties to theſe Preſents, to Order, Diſtribute, Divide and Set Over unto, and amongſt the ſaid Creditors, Parties to the Preſents, (or at leaſt ſuch of them as either have, or ſhall in due time make good and ſufficient proof of their ſeveral reſpective Debt and Debts) the ſaid Sum of, *&c.* for and towards payment and ſatisfaction of their reſpective Debts, in the ſaid Schedule hereunto annexed, mentioned and expreſſed, ratably and proportionably, according to their ſeveral and reſpective Debt and Debts, at and after the rate of Three Shillings and Eight Pence in the Pound of their reſpective Debts. **Now this Indenture witneſſeth,** That the ſaid Commiſſioners, Parties to theſe Preſents, in further execution of the ſaid Commiſſions and Statutes therein mentioned, and by Force and Vertue thereof, and for and in conſideration that a Due and Legal Diſtribution may be effected and made as to the ſaid Sum of, *&c.* before-mentioned, Have Ordered, Diſtributed, Diſpoſed, Divided and Set Over, and by theſe Preſents, do as much as in them, the ſaid Commiſſioners, Parties to

Diſtribution.

theſe Preſents, lieth, and they lawfully may Order, Diſtribute, Diſpoſe, Divide and Set Over, unto and amongſt them the ſaid Creditors above-named, one of the Parties to theſe Preſents, the ſaid Sum of, *&c.* in Manner and Form following (that is to ſay) to each, and every one of them the ſaid Creditors, as have well and ſufficiently made proof of their ſeveral and reſpective Debt and Debts, or ſhall in due time make ſuch proof, a part and proportion of the ſame ſhare and ſhare-like, according to the quantity and proportion of their ſaid Debts, in the ſaid Schedule indented hereunto annexed, mentioned and expreſſed, at, and after the rate of 3 *s.* and 8 *d.* in the Pound of their ſaid reſpective Debts; **To have and to hold**, and enjoy the ſaid Sum of, *&c.* and every part and parcel thereof unto them the ſaid Creditors, Parties to theſe Preſents, their Executors, Adminiſtrators and Aſſigns, as their, and every of their own proper Monies and Eſtate, towards payment and ſatisfaction of their ſaid ſeveral and reſpective Debts, ſo farforth as the ſame will amount unto the ſame, to be ratably and proportionably diſtributed and divided, as herein before is mentioned. **And** the ſaid T. P. H. N. M. L. and J. B. and the reſt of the Creditors above-named, one of the Parties to theſe Preſents, for themſelves ſeverally, and for

for their ſeveral and reſpective Executors and Adminiſtrators, and not jointly one for the other, do Covenant, Promiſe and Grant to, and with the ſaid Commiſſioners, Parties to theſe Preſents, their reſpective Executors and Adminiſtrators, and to, and with every of them by theſe Preſents, That they the ſaid T. P. H N. M. L. and J. B. and the reſt of the Creditors above-named, one of the Parties to theſe Preſents, their reſpective Executors and Adminiſtrators, ſhall and will ſo farforth as concerneth his or their particular Debt and Intereſt herein, well and ſufficiently ſave harmleſs and keep indempnified all the ſaid Commiſſioners, by the ſaid Commiſſion Authoriſed, and every of them, their and every of their Bodies, Lands, Tenements, Goods and Chattels, and every part thereof, of, from touching and concerning, All, and all manner of Actions, Suits, Arreſts, Coſts, Damages and Expences whatſoever, which they, or any of them may ſuffer, ſuſtain, or be put unto for, or by reaſon of this preſent Deed of Diſtribution, or any other Act, matter or thing whatſoever lawfully done or executed by vertue of the ſaid Commiſſions, or their, or any of their lawful intermedlings in any of the Eſtate of the ſaid R. G. by Force, Vertue or Colour thereof. In Witneſs whereof the Parties to theſe Preſents, firſt above-named, have interchangeably, *&c.*

Bill by a Principal Creditor to call the Aſſignees to Account, and diſcover what of the Bankrupts Eſtate came to their hands.

IN humble manner complaining, ſheweth unto your Lordſhips your Orator C. J. of *London*, Merchant. Whereas in the year 1658. and ſome few years afterwards your Orator had dealings with one *J. Robinſon* of, *&c.* in the way of Merchandiſe, whereby he became Debtor unto your Orator, for Goods and Merchandizes ſold and delivered to him the ſaid J. R. and for ſeveral ſums of Mony which he the ſaid J. R. had of your Orator, and were paid for him by your Orator upon Bills of Exchange and otherwiſe, in the ſum of Four and Twenty Hundred Pounds Sterling; and he the ſaid J. R. being ſo indebted to your Orator in ſuch a great ſum of Mony; and ſometime in the year 1661. he the ſaid J. R. failing in his Eſtate, and becoming Bankrupt, your Orator for the recovery and gaining his ſaid Debt out of the Eſtate of the ſaid J. R. he himſelf being gone beyond the Seas, your Orator did ſue forth his Majeſties Commiſſion, grounded upon the ſeveral Statutes made concerning Bankrupts, againſt him the ſaid J. R. and accordingly the ſame

was

was granted and iſſued forth againſt him at the ſole Inſtance and Petition of your Orator on the 24*th* of *May*, in the 13*th* year of, *&c. Anno Dom.* 1661. directed to J. P. R. A. Eſquires, J. L. H. N. and R. H. Gent. the major part of which ſaid Commiſſioners did put the ſaid Commiſſion in Execution, and ſate ſeveral times in the ſaid year 1661. And after for the diſcovering and finding out of the Eſtate of the ſaid J. R. And having ſo done, did agree by, and with the conſent of the other Creditors of him the ſaid J. R. that came into the ſaid Commiſſion, that your Orator, and one E. M. of, *&c.* another of the ſaid R.'s Creditors that was come into the ſaid Commiſſion, ſhould be Aſſignees of the Eſtate of the ſaid J. R. and ſhould be impowered by them the ſaid Commiſſioners by Deed of Aſſignment under their Hands and Seals, to gather in and receive the ſame Eſtate in truſt, and for the uſe of themſelves and all other the Creditors of the ſaid J. R. that ſhould duly ſeek relief by the ſaid Commiſſion, and towards ſatisfaction of their ſeveral Debts; but notwithſtanding ſuch Agreement and Conſent of the Commiſſioners and Creditors, the ſaid Commiſſioners ſometime afterwards, at the inſtigation of the ſaid E. M. and of P. S. another of the Creditors who was come into the ſaid Commiſſion, and had before conſented to your Orators being one

one of the Aſſignees, as is afore-mentioned, did make their Deed or Deeds of Aſſignment of the ſaid J. R.'s whole Eſtate, of a very conſiderable value in Goods, Debts and Monies, amounting to 3000 *l.* and upwards, to them the ſaid P. S. and E. M. to both whom the ſaid R. was indebted 100 *l.* or thereabouts, your Orator being a Creditor for 2400 *l.* as afore is mentioned; part of which ſaid Eſtate was inſerted in a Schedule, annexed to one part of the ſaid Aſſignments; a Copy whereof is alſo hereunto affixed. And your Orator further ſheweth to your Lordſhip, that the ſaid P. S. and E. M. being ſo conſtituted and made Aſſignees of the Eſtate of the ſaid J. R. by the major part of the ſaid Commiſſioners, by one or more Deed or Deeds of Aſſignment under their Hands and Seals, and impowred to recover, gather in and receive the ſame Eſtate in truſt for the uſe of your Orator, and other the general Creditors of the ſaid J. R. that ſhould duly ſeek relief by the ſaid Commiſſion; they the ſaid P. S. and E. W. did enter into a Covenant under their Hands and Seals, to, and with the ſaid Commiſſioners to give and render unto them upon reaſonable requeſt, an account of whatſoever Monies they, or either of them ſhould receive and gain in of the ſaid J. S. and relating to his Eſtate, and pay and ſatisfie the ſaid Monies to them the

ſaid

ſaid Commiſſioners, to the end the ſame might be by them divided equally amongſt all the Creditors of the ſaid J. R. that ſhould come into the ſaid Commiſſion, proportionable to their ſeveral Debts. And your Orator further ſheweth, that they the ſaid P. S. and E. M. being ſo intruſted, as aforeſaid, did recover and gain in ſeveral great ſums of Mony which belonged to the Eſtate of the ſaid J. R. and did keep the ſame in their own hands for ſeveral years, amounting to 2000 *l.* or more, for which hitherto they, or either of them have not given any account, the ſaid Commiſſioners themſelves, who might have called them to ſuch account, according to their Covenants, being deceaſed. Whereby they the ſaid Aſſignees have for ſeveral years kept all the ſaid Monies, and intend ſtill ſo to do, and to pay no proportion of the ſame to your Orator for his ſaid great Debt of 2400 *l.* or to the other Creditors, to your Orators knowledge, without they be compelled thereunto by order of this Honourable Court, contrary to all Equity and Good Conſcience. And for that your Orator is no ways relievable herein, but in Equity before your Lordſhip, or to have any diſcovery of the ſaid matters, ſave in this Honourable Court. And for that alſo your Orators Witneſſes are either dead or in places remote and unknown: To the

the end therefore, that your Orator may receive his due and equal proportion of all Monies come to the hands of the ſaid P. S. and E. M. relating to the ſaid J. R.'s Eſtate, for, and in reſpect of his ſaid Debt of 2400 *l.* and proportionable thereunto. And to that purpoſe, that the ſaid P. S. and E. M. may bring in a true and particular account upon their Oaths, of all the Eſtate that hath been heretofore aſſigned to them by the ſaid Commiſſioners, the ſame being in truſt, as afore-mentioned, and declare whether they have had one or more Aſſignments made to them of the ſame, together with the Dates thereof, and the Covenants therein contained, and whether they ſealed the Counterpart of ſuch Aſſignment, and may ſet forth a true particular of how much of the ſaid Eſtate hath been received by them, or either of them, or under them, and of, and from whom, and when, and may declare upon their Oaths, what other Creditors of the ſaid J. R. did in due time come into the ſaid Commiſſion, and did pay their Contribution-Mony as your Orator hath done; and to the end that the Monies found to be received by them the ſaid P. S. and E. M. or either of them, may be by Order or Decree of this Honourable Court ſo divided, that your Orator may have his proportion thereof, and your Orator have relief in the pre-

premiſſes, according to Equity and Good Conſcience (the ſame to go to, and to be applied towards the ſatisfaction of a certain Debt due from your Orator to W.R. Eſq; according to a Proviſo in a certain Act of Parliament made in the 30*th* year of his now Majeſties Reign, intitled *An Act for the further relief and diſcharge of poor diſtreſſed Priſoners for Debt*) And that the ſaid S. and M. may true anſwer make to all, and every the matters aforeſaid, May it pleaſe your Lordſhip, *&c.*

As for the Schedule fixt to the Bill, Intitle it thus.

The Schedule or Inventory, whereof mention is made in the Deed, whereunto the ſame is annexed, and whereunto the Bill annexed doth relate, as followeth, (*viz.*)

Monies come to the Hands and Poſſeſſion of ſeveral perſons of the ſaid J.R.'s and belonging to his Eſtate.

Imprimis, In ready Mony which came to the Hands and Poſſeſſion of—— 100 *l.*

Item, &c.

Debts owing to the ſaid J. R. and his Eſtate.

Imprimis, Owing by *James Weſt.*—

In toto, &c.

Bond

Bond from the Aſſignees to the Principal Creditor in 2000 *l. to pay his proportionable ſhare.*

THE Condition of this Obligation is ſuch, Whereas a Commiſſion under the Great Seal of *England*, grounded upon the ſeveral Statutes made concerning Bankrupts, hath been awarded againſt J. R. late of the City of *London*, Mercer, directed to certain Commiſſioners therein named, to execute the ſame: And whereas the major part of the Commiſſioners, by the ſaid Commiſſion authorized, in Execution of their ſaid Commiſſion, have by their Deed Indented of Diſtribution, bearing Date with theſe Preſents, diſtributed and divided divers Debts and ſums of Mony, mentioned and expreſſed in a Schedule to the ſaid Deed annexed unto, and amongſt the above bounden P. S. and E. M. and other the Creditors of the ſaid J. R. duly ſeeking relief by the ſaid Commiſſion, according to the limitation of the ſeveral Statutes, whereupon the ſame was grounded (to wit) according to the quantity and proportion of their ſeveral and reſpective Debts, in the ſaid Deed alſo expreſſed; wherein the Debt owing to the abovenamed C. J. is mentioned, to be the ſum of 1144 *l.* 8 *s.* 5 *d.* And whereas the ſaid C. J.

C. J. hath formerly given conſent, that the major part of the Commiſſioners ſhould by their Deed of Aſſignment Aſſign and Set Over unto the ſaid P. S. and E. M. amongſt other things, All, and ſingular the ſaid Debts and ſums of Mony mentioned in the ſaid Schedule, which the ſaid Commiſſioners have done accordingly; if therefore the ſaid P. S. and E. M. ſhall from henceforth, and at all times hereafter, upon reaſonable demand, and ſufficient Acquittance and Acquittances, given in writing to them, or any of them reſpectively in that behalf well and truly pay, or cauſe to be paid unto the ſaid C. J. his Executors or Adminiſtrators, or to his or their Aſſignee or Aſſignees, lawfully authoriſed by writing under his and their Hands and Seals, witneſſed before two or more perſons of Credit, to receive the ſame (that is to ſay) of all ſuch Quanties and Proportions of Monies of the ſaid ſum of 1144*l.* 8*s.* 5*d.* mentioned in the ſaid Deed to be owing to the ſaid C. J. as they the ſaid P. S. and E. M. or either of them, their, or either of their Executors, Adminiſtrators or Aſſigns ſhould receive of any perſon or perſons, by means or vertue of the ſaid Indenture of Aſſignment, according to the Quantity and Proportion of the ſaid ſum of 1144*l.* 8*s.* 5*d.* in reference to the Debts of other Creditors in ſuch Deed mentioned, or according to the Quan-

Quantity or Proportion of ſo much thereof, as ſhall ſtand, and be duly proved before the major part of the Commiſſioners, by the ſaid Commiſſion authoriſed, and by them ſignified under their Hands, ſo to be proved according to a Proviſo in the ſaid Deed of Dividend mentioned, and that alſo in proportion with the ſums of Mony mentioned in the ſaid Schedule to be owing unto other the Creditors of the ſaid J.R. then this preſent Obligation to be void, or elſe to remain in full Force and Vertue.

Plea

Plea and Demurrer to a Bill brought by the Complainants as Creditors and Aſſignees under a Statute of Bankrupt, to avoid Leaſes, and redemiſe for ſecurity of Mony made to the Defendant by the Bankrupt, on pretence the Commiſſioners had Aſſigned the Creditors to pay the Mony to the Defendant, and he to Aſſign his Eſtate; Whereas the Commiſſioners had no power to do the ſame, and the Eſtate in Law made to the Defendant was two Years and ſix Months before the pretended Bankrupcy; and for Plea, the Defendant offers the Indentures, and a Fine levyed to him, long before the Bankrupcy.

THE ſaid Defendant, for Demurrer to the ſaid Bill, ſaith, that if all the ſaid Bill were true, as it is not; yet the ſaid Complainants of their own ſhewing, as they themſelves have made their Caſe, ought not to be relieved thereupon either in Law or Equity: For this Defendant ſaith, that if it were true, that J. E. in the Bill named, and F. his Wife in the Month of, *&c.* in the 22*th* year of the Reign, *&c.* were lawfully ſeiſed of a good, perfect and indefeaſible Eſtate to them, and to the Heirs of the ſaid J. E. of the Meſuage or Tenements in the Bill mentioned; and that the ſaid

J. and F. being ſo ſeiſed by agreement had and made by and between them the ſaid J. E. and F. his Wife and this Defendant, did by their Indenture of Leaſe under their Hands and Seals, bearing date the twelfth day of *J.* which was in the ſaid 22*th.* year, *&c.* Demiſe, Grant, and to Farm, let unto this Defendant the ſaid Meſuages or Tenements for the Term of 21 Years and 28 Days, from the Feaſt, *&c.* rendring a Penny Rent yearly at the Feaſt of, *&c.* if the ſame were lawfully demanded: And that this Leaſe was made in Conſideration of 240 *l.* paid, or lent by this Defendant to the ſaid J. E. and F. his Wife. And if it be likewiſe true, that this Defendant in, and upon the 14*th.* Day of the ſaid Month of, *&c.* in the ſaid 22*th* Year, *&c.* did Redemiſe the ſaid Meſuages or Tenements to the ſaid J. E. and F. his ſaid Wife, for the Term of 21 Years from the ſix and twentieth day of *J.* in the ſaid 22*th.* Year, *&c.* yielding and paying therefore yearly, during the ſaid Term, unto this Defendant the ſum of 30 *l.* at the Feaſt of, *&c.* and the firſt payment thereof to begin at the, *&c. Anno Dom.* 1625. *&c.* with a Proviſo, That if the ſaid Rent of 30 *l.* ſhould be behind and unpaid in part, or in all, over or after any of the days of payment limited for the payment thereof, that then, and from thenceforth it ſhould, and might be lawful

ful to and for this Defendant into the ſaid Meſuages or Tenements to re-enter. And if it be likewiſe true, That the ſaid J.E. did become bound unto this Defendant in a Bond of 300 *l.* conditioned for the performance of the Covenants and Agreements contained in theſe Indentures: And that afterwards the ſaid F. died, and the ſaid J. E. her Husband ſurvived, and did truly pay to this Defendant the ſum of 30*l.* upon the Feaſt-day of the Nativity of St. *John Baptiſt*, which was in the ſaid Year of our Lord God 1625. for a Years Rent then due upon the ſaid laſt mentioned Leaſe. And if it be likewiſe true, That the ſaid J. E. upon the Feaſt of the Nativity of St. *John Baptiſt* 1626. did fail to pay the ſaid ſum of 30*l.* then due for the ſaid Rent, and did after condeſcend to make, and did make unto this Defendant one other Leaſe of the ſaid Meſſuages or Tenements, by Indenture, bearing Date the 28*th.* day of *December*, 1626. and in the ſecond Year of the Reign of our Sovereign Lord the King's moſt Excellent Majeſty that now is, for the Term of 21 Years, to begin from the expiration of the ſaid firſt recited Leaſe, for the Yearly Rent of one Pepper-Corn, upon Condition, That if the ſaid J. E. his Executors, Adminiſtrators or Aſſigns, or any of them did, or ſhould from time to time, and at all times then after, during the reſidue of the ſaid Term of 21

Years then to come and expired, well and truly pay, or cauſe to be paid unto this Defendant, his Executors, Adminiſtrators or Aſſigns the ſaid Rent of 30 *l.* at ſuch days, times and place, and in ſuch Manner and Form as in the ſaid recited Indenture of Leaſe is limited and appointed, then the ſaid laſt mention'd Leaſe ſhould Ceaſe, Determine and be utterly Void. And if it be likewiſe true, That the ſaid J. E. did afterwards pay unto this Defendant the 30 *l.* which was then formerly due to have been paid at the Feaſt of St. *John Baptiſt*, which was in the ſaid Year of our Lord God, 1626. and did after pay unto this Defendant the Rent of 30 *l.* due at the Feaſt of St. *John Baptiſt*, *Anno Dom.* 1627. And did pay unto this Defendant the like Rent of 30 *l.* at the Feaſt of St. *John Baptiſt*, *Anno Dom.* 1628. And if it be likewiſe true, That afterwardas the ſaid Rent of 30 *l.* due at the Feaſt of St. *John Baptiſt*, 1629. was behind and unpaid, and that this Defendant for non-payment thereof did enter upon the ſaid Demiſed Premiſſes, and hath received, or might have received of the Under-Tenants thereof all the Rents or Profits thereof, as well thoſe that were behind at the Feaſt of St. *John Baptiſt*, 1629. as ſuch as have grown due ever ſince, the value of the ſame Tenements being 30 *l. per Annum*. And if it be likewiſe true, That the ſaid

J. E.

J. E. were a Man that did ſeek or get his Living by Buying and Selling, and that the ſaid J. E. were indebted to the Complainants and others in the ſum of 500 *l.* and did in *December*, *Anno Dom.* 1626. begin to keep his Houſe in St. *Albans*, to the intent to delay his Creditors from the Recovery of their juſt and true Debts, and hath ſince abſented himſelf, and thereby is become a Bankrupt. And if it be likewiſe true, That the ſaid Complainants, and others of the Creditors of the ſaid J. E. did the 28*th* day of *J.* laſt, being the 28*th* day of *J.* *Anno Dom.* 1631. become Suiters to the Right Honourable the Lord Keeper, *&c.* for a Commiſſion upon the Statutes of Bankrupts, to be awarded againſt the ſaid J. E. and that thereupon a Commiſſion was awarded the 29*th* Day of *J.* now laſt paſt, directed to the Commiſſioners in the Bill named, or to any four or three of them. And if it be true, That the ſaid Commiſſioners have begun to put the ſaid Commiſſion in Execution, and have found that the ſaid J. E. being indebted to the ſaid Complainant and others, did in the Month of *December*, *Anno Dom.* 1626. begin to keep his Houſe, and abſent himſelf from his Creditors, and that the ſaid J. E. did thereby become a Bankrupt, as by the ſaid Bill is ſet forth. This Defendant for Demurrer to the ſaid Bill ſath, that if all

the ſaid Surmiſes and Allegations were true, yet the ſaid Complainants, of their own ſhewing, ought not thereupon to be relieved either in Law or Equity; for this Defendant ſaith, that the ſaid Commiſſioners, by vertue of the ſaid Commiſſion, had not any thing to do with any of this Defendants ſaid Leaſes, neither were the ſame Leaſes any way ſubject to the ſaid Commiſſion, for that it appeareth of the Complainants own ſhewing, that the ſaid Leaſes were made for good conſideration of Mony, paid long before the ſaid J. E. did become a Bankrupt (that is to ſay) the ſaid firſt Leaſe made by the ſaid J. E. unto this ſaid Defendant, and the Redemiſe thereupon made by this Defendant to the ſaid J. E. were both made in conſideration of 240 *l.* paid by this Defendant to the ſaid J. E. to ſecure unto him this Defendant, the ſum of 30 *l. per Annum* out of the Meſuages or Tenements thereby Demiſed for 21 years. And the ſaid later Leaſes, as it appears of the Complainants own ſhewing, was made after a forfeiture of the Redemiſe made by this Defendant to the ſaid J. E. and after a forfeiture of a Bond of 300 *l.* and the ſame was only made to ſecure the ſubſequent payments of the ſaid Rent of 30 *l. per Annum.* And this Defendant ſaith, that the ſaid firſt Leaſe, and the ſaid Redemiſe, being ſo as aforeſaid, made in *June*, *Anno Dom.* 1624.

1624. and in the 22*th* Year, *&c.* this Defendant then could not prognoſticate that the ſaid J. E. would become a Bankrupt in *December* 1626. which was two Years and ſix Months after the making of the ſaid Leaſe and Redemiſe; for which cauſe, and becauſe it appeareth of the Complainants own ſhewing, that the ſaid Leaſe and Redemiſe were made for the conſideration of 240*l.* and to ſecure to this Defendant 30*l.* *per Annum* for 21 Years, and were made two Years and ſix Months before the ſaid J. E. did become a Bankrupt: And becauſe the Complainants by their Bill do ſet forth a good Title both in Law and Equity to this Defendant, of, and in the Meſuages, Lands and Tenements in queſtion, but do not ſhew nor derive to themſelves any Title at all thereunto, either in Law or Equity, neither by Grant nor Aſſignment from the Commiſſioners, nor otherwiſe; therefore this Defendant doth Demur, and abide in Law upon the inſufficiency of the ſaid Bill, and doth humbly demand Judgment of this Honourable Court, if he, this Defendant, ſhall be compelled to make any anſwer thereunto. And for further Cauſe of Demurrer to the ſaid Inſufficient Bill, this Defendant ſaith, That the Title ſet forth by the Complainant by their ſaid Bill to the Leaſes in queſtion, or to the Lands, Tenements or Hereditaments

thereby Demiſed, is no good Title in Law or Equity. For if it be true, That the Commiſſioners, upon theſe Statutes of Bankrupts, did Aſſign and Appoint the Complainants to pay and tender unto this Defendant the ſum of 240 *l.* with Intereſt, and in ſuch manner as by the ſaid Bill is ſuggeſted; and Aſſign and Appoint them to take from this Defendant an Aſſignment or Conveyance of the Leaſes made to this Defendant of the Lands in the Bill mentioned, to the benefit and behoof of the Complainants, and of the other Creditors of the ſaid J. E. yet the ſaid Commiſſioners had no power by any the Statute or Statutes of Bankrupts, or by their Commiſſion, either to Aſſign or Appoint the Complainants to pay or tender unto this Defendant any ſum or ſums of Mony, or to Aſſign or Appoint this Defendant to Aſſign or Convey the ſaid Leaſes or Lands, Tenements or Hereditaments thereby Demiſed. For which Cauſe alſo, and becauſe there is no matter of Equity contained in the ſaid Bill, but the ſaid Commiſſioners do thereby indeavour to avoid a plain, honeſt and lawful contract made for juſt and valuable conſideration two Years and ſix Months before the ſaid J. E. became a Bankrupt, this Defendant doth Demur in Law upon the inſufficiency of the ſaid Bill, and doth humbly demand the Judgment of this Ho-

Honourable Court, if he, this Defendant, ſhall be compelled to make any anſwer thereunto. And for Plea in Bar to this ſaid Bill, this Defendant ſaith, That the ſaid J. E. and F. his ſaid Wife in the Term of the Holy Trinity, which was in the 22*th* Year, *&c.* by one Fine acknowledged, and Levied before his then Majeſties Juſtices of his Court of Common Pleas at *Weſtminſter*, did grant unto this Defendant all, and ſingular the Meſſuages, *&c.* in the ſaid Indenture of the 12*th* and 14*th* days of *June*, in the ſaid 22*th* Year, *&c.* mentioned by the names of three Meſſuages, *&c.* with the Appurtenances in the Town of St. *Albans*, and in the Pariſh of St. *Michaels*: To have, and to hold to this Defendant, from the Feaſt of St. *John Baptiſt* then next following, for the Term of 21 Years and 28 Days then next following, and fully to be compleat and ended, as by the ſaid Fine remaining upon Record in his Majeſties ſaid Court of Common Pleas appeareth. And therefore this Defendant demandeth the Judgment of this Honourable Court, if againſt the Indenture of the ſaid J. E. under his Hand and Seal, made for the conſideration of 240 *l.* confeſſed by the Complainants to be paid, and the ſame Indenture acknowledged by the ſaid Complainants to be made two Years and ſix Months before the ſaid J. E. did become a Bankrupt; and if

againſt

againſt the ſaid Fine, the ſaid Complainants, as Creditors to the ſaid J. E. upon a bare ſurmiſe, that the Commiſſioners upon the Statute of Bankrupts, have appointed them the ſaid Complainants to pay 240 *l.* and this Defendant to Aſſign or Convey his Intereſt to the ſaid Complainants; the ſaid Complainants ſhall be received to Complain in this Honourable Court. All which Matters this Defendant is ready to maintain as this Honourable Court ſhall award, and humbly prays to be diſmiſſed forth of the ſame, with his reaſonable Coſts and Charges in this behalf moſt wrongfully ſuſtained.

Ano-

Mr. *Ben. Hintons* Caſe in Chancery.

Hillary 1687.

John Butcher Plaintiff, exhibited his Bill againſt *Ben. Hinton*, *John Hill*, *Obadiah Sedgwick* and *George Sittwell*, Aſſignees of the Commiſſioners of Bankrupcy awarded againſt *Hinton* of *London* Goldſmith, *George Parker*, *Parſon Parks*, *Roſomond Wattſon* and *Elizabeth* and *William Short*, Defendants.

THAT *Butcher* and *Short* were Partners in 1669. in the *Norway* Trade for Timber uſed in Rebuilding *London* for ſeven years, two years of which *Butcher* was in *Norway*. And having occaſion for Mony to pay Bills before the Goods could be diſpoſed of, *Short* employed *Hinton* as Banker, who paid and received ſeveral ſums on the joint Account: and not ſuſpecting any unjuſt dealing two years after accepted the Account *Hinton* gave, without examining the *Items*. The Bill.

That *Butcher* and *Short* being forc'd to truſt great quantites of Goods, ſuſtained great Loſſes; *Hinton* finding them in ſudden Exigences to pay Bills, took advantage and prepared Accounts of Mony

Mony paid and received, in which *Hinton* made them Debtors 4000 *l.* and pretended there was no Error or Overcharges, desired Bonds for the said ballance, declared it should be no prejudice, and if any Errors, it should be rectified, and the Security should be for no more than should appear to be due: They signed the Account and gave Bonds.

That after *Hinton* received and paid divers sums on Account on the Partnership, and perceiving they were forc'd to give great Credit, and being in great Exigences to pay Bills of Exchange and other occasions in Trade, took advantage and drew up another Account, and Bonds, and required them to execute the same, which they were forced to do, else he threatned to ruin them by bringing Actions on the Penalties; and being Conscious he had wronged them, contrived to avoid a re-examination, *Dec.* 4. 1675. pretending there was above 6000 *l.* due, and that he was pressed by his Creditors, and could not pacifie them unless he and his other Creditors would become bound; but *Butcher* alledging there was not so much due, and the Partnership being ended, and their Debts divided, was unwilling to enter into new Bonds for more than his own part, and be discharged of *Shorts* part, and have the Bonds and Securities delivered up, and the new Bonds to be sub-

ject

ject to the ſame examination the old ones were, and to make good no more than a moiety, which *Hinton* agreed to; and agreed that he and *Short* ſhould be bound for 2000 *l.* And *Hinton* promiſed to deliver up the old Bonds, and *Butcher* ſhould be diſcharged of all former Bonds, and *Hinton* executed two Receits on the 4*th* of *Decemb.* 1675. one of 4000 *l.* and the other of 2500 *l.* being the ſum demanded to be due on the old Bonds, and they ſealed new Bonds for 6300 *l.* with *Hinton* to his Creditors.

That *Hinton* took Counterbonds of *Butcher* and *Short* to ſave him harmleſs, and they having paid above 3000 *l.* and *Hinton* delaying to deliver up the old Bonds, or to come to a fair Account, *Butcher* brought a Bill to compel him thereto, but *Hinton* threatned to ruin him unleſs he would execute a General Releaſe, and give new Bonds, which he was compelled to do on *Hinton*'s promiſe, that he would come to a fair Account, and no uſe ſhould be made thereof, but to ſecure what was juſtly due: And thereupon he executed ſuch Releaſe and new Bonds.

That *Hinton* failing, a Commiſſion of Bankrupcy was awarded againſt him, and he declared a Bankrupt: And all the Bonds were aſſigned to *Sedgwick*, *Sittwell* and *Hill*, to whom *Butcher* applied himſelf to have the old Bonds, Releaſe and

and Security delivered up and cancelled, and that the Accounts might be examined, being willing to pay what ſhould appear to be due (if any thing due on his Account,) which the Aſſignees refuſed to do, and threatned to ſue the old and new Bonds, and recover the Penalties, tho' he had paid much on the new Bonds. And in looking over the Accounts found divers Errors, Omiſſions and Miſcomputations, and made his Accounts to carry 12 *l. per Cent.* Intereſt, and had charged near 3000 *l.* for Intereſt at 12 *l. per Cent.* and that thrown into ſeveral Ballances, Intereſt was again charged at 12 *l. per Cent.* which was Intereſt upon Intereſt at 12 *l. per Cent.* and *Hinton* had ſeveral ſums of Mony in his Hands which he received, ſo that he charged the Plantiff with Intereſt in effect for his own Mony 12 *l. per Cent.* and Intereſt for that Intereſt at 12 *l. per Cent.* and had overcharged for Priſes of Dollers: And no allowance made for Mony the Partners paid on *Hinton*'s Account, nor of Mony paid the Aſſignees; ſo that the Plaintiff was wronged 5000 *l.* the Plaintiff hoped the Account ſhould be unravelled, being willing to pay what is due on a fair Account, if any thing on his part due. And the old and new Bonds ought to be delivered up.

That

That *Hinton* and *Short* would lay the whole on the Plaintiff, and refuſed to produce the Books of Accounts and Bonds; That the ſame might be produced, and old and new Bonds delivered up, and ſatisfaction on Judgments acknowledged, if any be, and the Accounts examined and liquidated, and the Plaintiff on paying his part of what (if any thing) be due on his part, and that the Defendants might anſwer, and the Plaintiff be relieved, Is the ſubſtance of the Bill.

They believed *Butcher* and *Short* were Partners, and *Hinton* their Banker, who received and paid Mony on the joint Account. And as to the Account from *July* 1680. they referred to *Hinton*'s Books, but as to all before, they pleaded the Bonds, and the 9*th* of *July* 1680. a General Releaſe given *Hinton*.

Hill, Sedgwick and *Stwell* for Anſwer, ſay

It was ordered the Plea ſhould ſtand for an Anſwer, with liberty for the Plaintiff to except, who excepted, and the Defendants Anſwered. As to all Errors, Overcharges and Uſurious Intereſt they referred to *Hinton*'s Books.

17 *July* 4 *Jac.* II.

That the Plaintiff and *Short* were bound with him to ſeveral perſons, and that the Plaintiff had paid ſeveral ſums to the Aſſignees: That the Plaintiff exhibited a Bill againſt him to Account, and an Account was ordered, but they Accounted between themſelves, and the Plain-

Hinton Anſwers, and ſays

Plaintiff was greatly indebted to him, and 1 *July* 1680. he entred into 42 ſeveral Bonds for payment of 100 *l.* a-piece at 100 *l.* a Month; and the 9*th* of *July* the Plaintiff gave a General Releaſe, ſince which he had ſeveral dealings with him, and was willing to Account for the ſame. And by his further Anſwer,

That the Plaintiff and *Short* was indebted to him on the Plaintiffs coming to *England*, 6000 *l.* that the Accounts were fairly ſtated without any abuſe. And about *Decemb.* 1675. they were bound with him to ſeveral Creditors, and they gave him Counter-ſecurity. As to Errors referred to his Books, and that the 4000 *l.* was brought on the Ballance of the laſt Account.

Short being dead, his Wife and Adminſtratrix anſwered.

Believes the Matters *prout* Bill, and that the Plaintiff and her Husband were great ſufferers, and that on a fair Account, little, if any thing was due to *Hinton*.

That *Short* in 1680 exhibited a Bill againſt *Hinton*, *Parker*, *Parks*, *Robinſon*, *Watſon* and *Butcher*, 12 *Nov.* 1. *W. M. Sedgwick*, *Sitwell* and *Hill* were made Parties.

And *Short* dying, his Adminiſtratix brought her Bill of Revivor againſt all the ſaid Defendants, which to the purpoſe, as *Butcher*'s Bill, to have a fair Account, and be relieved.

On

On reading the Proceſs and view of *Hinton*'s Accounts, whereby many Errors, Overcharges and Miſcomputations appeared, The Court declared, the Defendants, the Aſſignees ought to ſtand in place of the Creditors of *Hinton*, to whom the Bonds of 6300 *l.* was given, and referred it to Sir *John Francklin* to look into the whole matter, beginning with the Account diſtinguiſhed by the name of the 4000 *l.* Account, made up about 1670. and ſo downwards into the ſeveral Accounts, and to ſtate how he finds the ſame, and Errors, Overcharges and Miſcomputations and Allowances of Intereſt not allowed by Law appeared to be in any of *Hinton*'s Books of Accounts, and what Mony *Butcher* and *Short*, and which of them paid towards diſcharge of the Bonds in *Decemb.* 1675. or any other Bonds, and which of them, when, and to whom. And *Hinton*'s Books, Accounts and Bonds were to be left with the Maſter on Oath. 11 *Decemb.* 2 *W. & M.*

The Maſter made his Report, and ſhews the Errors, Overcharges and Miſcomputations, and Intereſt carryed from one Ballance to another at 12 *l. per Cent.* 22 *Jan.* 1690.

It appeared that in the 4000 *l.* Account, there was an Error of 500 *l.* beſides 224 *l.* 14 *s.* 6 *d.* charged for Intereſt above lawful Intereſt, which were made part of the next Ballance, and carried 3 *Nov.* 2 *W. & M.* on hearing on the Report.

Intereſt upon Intereſt at 12 *l. per Cent.* And the 4*th* of *Decemb.* 1675. the 500 *l.* between *Novemb.* 1670. and the ſaid 4*th* of *Decemb.* 1675. the Plaintiffs were overcharged in unlawful Intereſt 1789 *l.* 1 *s.* 7 *d.* So then there was due for Mony and Lawful Intereſt but 3986 *l.* 3 *s.* 11 *d.* which with 1056 *l.* 10 *s.* Lawful Intereſt to the 4*th* of *May* 1680. made 8042 *l.* 4 *s.* 9 *d.*

Towards diſcharge whereof the Plaintiff paid *Hinton*'s Creditors, by his order, 4627 *l.* 18 *s.* So there remained due the 4*th* of *May* 1680. on the joint Account 414 *l.* 6 *s.* 9 *d.* which with 266 *l.* 6 *s.* 9 *d.* Intereſt to the 23*d* of *Jan.* laſt, made 680 *l.* 15 *s.* 9 *d.*

And on the Plaintiff, *Butcher*'s particular Account 19 *l.* 4 *s.* 3 *d.* which makes in all 700 *l.* on payment of which the Plaintiffs Councel prayed the Releaſes, and all Securities might be delivered up.

On hearing the Defendants Councel on reading the Report, his Defendants Receits for 4300 *l.* given on executing the Bonds in *Decemb.* 1675. to the Creditors, The Court declared the Account ought to be opened, and the Plaintiffs not to be charged with more than appeared by the Books to be advanced, nor with more than Lawful Intereſt. And Decreed.

That

That the Report be confirmed, and the Plaintiff paying the Aſſignees 700 *l.* before the laſt day of *Eaſter* Term next, the Aſſignees to deliver up the Releaſes to be Cancelled, and all Bonds, Counterbonds and Notes before entred into by the Plaintiffs to *Hinton*, or to any other perſon for him, and acknowledg ſatisfaction on any Judgment or Judgments had by *Hinton*, or any his Creditors againſt the Plaintiffs. And a perpetual Injunction awarded for ſtay of all proceedings at Law againſt *Butcher*, for any the matters in queſtion, or demand in theſe Cauſes. And the Parties to give Mutual Releaſes to each other.

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F I N I S.

14	:	6
11	:	0
2	:	0
1	:	7 : 6
0		12 : 6
0	:	15 : 0
1	:	6 : 10
2	:	1 : 10